The Solicitors' Journal
and Weekly Reporter.
(ESTABLISHED IN 1857.)
LONDON, FEBRUARY 22, 1919.

ANNUAL SUBSCRIPTION, WHICH MUST BE PAID IN ADVANCE:
£2 12s.; by Post £2 14s.; Foreign, £2 16s.
HALF-YEARLY AND QUARTERLY SUBSCRIPTIONS IN PROPORTION.

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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

The Retirement of Sir Charles Stewart.

IT IS announced that Sir CHARLES STEWART is resigning the office of Public Trustee, and that he is to be succeeded by Mr. SIMPKIN, a member of the Chancery Bar. No one will question the energy and ability which Sir CHARLES brought to his office when he became the first holder of it under the Public Trustee Act, 1906. The establishment of an official trustee was not looked upon with favour in all quarters, but the doubts which were felt as to a public trustee being required have been dispelled by the enormous growth in the business of the office under Sir CHARLES STEWART'S management; and the objections based upon the unfitness of an official to intervene in matters requiring privacy and family knowledge have been disproved by the sympathetic and tactful treatment of beneficiaries which Sir CHARLES from the first determined to introduce. Under his management the department has been administered with great success, and he will leave it with the good wishes of those who have had occasion to use it. The selection of his successor is somewhat of a surprise, for, to the profession generally, Mr. SIMPKIN, who was called in 1905, is hardly known. We should have thought that a solicitor of tried capacity and wide knowledge of trust affairs would have been the natural choice for the post. But we presume that the Lord Chancellor has reasons for expecting that the new Public Trustee is specially qualified to carry on Sir CHARLES STEWART'S work.

The Appointment of King's Counsel.

IT APPEARS from the correspondence between the Lord Chancellor and the Attorney-General which we print elsewhere that the creation of new King's Counsel may be expected early in April. The practical cessation of any such appointments for more than four years has led to serious depletion of the ranks of the Inner Bar, and this has been specially noticeable in the Chancery Division. Latterly, under the system which keeps "silks" to a particular court unless the client is willing to pay a special fee of fifty guineas, there have not been sufficient King's Counsel available in each court to give clients a fair chance of selection, and no doubt this has accounted for the increasing tendency to employ only junior counsel—a tendency to which SARGANT, J., called attention

some time back, at the same time intimating that in important cases the Court was entitled to the assistance which leading counsel gave (see 60 SOLICITORS' JOURNAL, pp. 661, 671). We gather that the new list will be lengthy, and this must be the case if ambitious juniors are to be put in the place which they would have had but for the war. Whether there will at first be sufficient business to reward the new silks is another matter, which, it may be hoped, will adjust itself in course of time.

K.C.'s and the Work of the Courts.

THE REFERENCE we have just made to the assistance which leading counsel give to the Court suggests some observations on the relation between Judge and counsel under the existing system, especially in the Chancery Division. This means that the Judge has the same counsel continually practising before him, and he obtains very considerable help both from the arguments of leading counsel and from the way in which they conduct their cases. There is a mutual confidence which tends greatly to the convenient and harmonious disposal of business. Sometimes, it may be that a particular counsel obtains, or is thought to obtain, special influence with the Judge; but we doubt whether any ill effects have in practice arisen from this cause. The interchange of confidence is felt nearly to the same extent between juniors who are well known in the Courts and the Judge. Some interference with the system might, perhaps, be expected as a result of the fusion of the professions, though we doubt whether it would be substantial. It is not likely that the change would produce any great immediate result. The growth of advocacy among solicitors would be gradual, and there would be time for the Courts and the practitioners in them to adapt themselves to new conditions. But the special function which leading counsel perform in assisting the Judges and facilitating the work of the Courts should not be lost sight of when the question of fusion comes to be considered in detail and in its practical bearing.

The New Rules of the Supreme Court.

WE PRINT elsewhere a lengthy set of draft new R.S.C. Some of them will be found to be of considerable importance. An alteration in ord. 14, r. 9 (b), gives the Judge a discretion as to costs in unsuccessful order 14 cases. A new rule is added to order 19, allowing applications for particulars to be made by letter. Rule 2, ord. 31, is redrafted so as to require a copy of proposed interrogatories to be delivered with the summons or notice for leave to deliver interrogatories; and a new rule (rule 13A) gives power, on applications for discovery, to order a list of documents to be delivered in lieu of discovery by affidavit. But an affidavit may be ordered afterwards. Rule 19A (3) of the same order is extended by substituting "possession, custody or power" for "possession or power."

Rules as to Trial.

A NEW rule (1A) is inserted in order 36 (Trials), giving power to the Court or Judge to certify for a speedy trial; and a paragraph is inserted in rule 10 specifying the matters which are to be considered in fixing the place of trial. Attention should be given to the wording of the addition. The paragraphs (*a*)—(*f*) of this rule as to trials on circuit have been redrafted and placed as paragraphs (*a*) to (*i*) in a new rule 10. This seems to give two rules 10. And rule 22B as to entry for trial has been altered so as to make the period for entry not less than 7 days, instead of, as now, in certain cases, 21 days before the commission day. A new rule—ord. 36, r. 34A—gives the Judge on circuit power in certain cases to change the place of trial or postpone the trial.

Appeals from Masters and Referees.

IN ORDER 54 (Applications and Proceedings at Chambers) rule 22 is annulled and new rules—22 and 22A—are introduced, under which the Judge at Chambers in the King's Bench Division has power, where a case is long or important, to direct it to be heard in court, the decision in court being deemed to be a decision at chambers; and regulations are made as to appeals from masters in that division. And a new Order—59A—is introduced, regulating appeals from official or special referees, and the existing rules applying to such appeals are annulled. Changes are also made in order 64 with regard to costs of applications for time, and as to the time for applications to set aside awards.

The Covenant of the League of Nations.

ON FRIDAY, the 14th inst., President WILSON read to a plenary sitting of the Peace Conference of the Allies and the Associated States the draft scheme for the establishment of a League of Nations which has been prepared by the League of Nations Committee. The committee is representative of fourteen nations—the United States, Great Britain, France, Italy, Japan, Belgium, Brazil, China, Czecho-Slovakia, Greece, Poland, Portugal, Rumania, and Serbia—and the draft had been adopted unanimously. To do it justice it should be compared with other schemes which have been published; that, for instance, incorporated in General SMUTS's recent pamphlet, and in works which we have from time to time noticed in these columns; and also with Lord PHILLIMORE's interesting discussion of the matter in the current *Quarterly Review*. We must be content, however, for the present briefly to note the chief points of the scheme. The scheme takes the form of a covenant between the original members, provision being made for the admission of new members. It is apparently contemplated that enemy States shall not be original members, and under Article 7 their admission will require the assent of not less than two-thirds of the States represented in the body of delegates, and there is the following provision:—

> "No State shall be admitted to the League unless it is able to give effective guarantees of its sincere intention to observe its international obligations, and unless it shall conform to such principles as may be prescribed by the League in regard to its naval and military forces and armaments."

We do not underrate the importance of a covenant between the Allied and Associated States; but, of course, the permanent efficacy of the League depends upon its inclusion of States as to which a state of war still exists.

The Prevention of War.

THE SCHEME provides in the first place for meetings of a Body of Delegates; for more frequent meetings of an Executive Council; and for a permanent International Secretariat to be established at the seat of the League. It is apparently intended that each member of the League shall have one vote on this Body, but may have several representatives, not exceeding three. The Executive Council will consist of representatives of the United States of America, the British Empire, France, Italy, and Japan, together with representatives of four other States members of the League; the selection of these four States to be made by the Body of Delegates on such principles and in such manner as they think fit. Article 8 adopts the principle of the limitation of armaments:—

> "The high contracting parties recognize the principle that the maintenance of peace will require the reduction of national armaments to the lowest point consistent with national safety, and the enforcement by common action of international obligations, having special regard to the geographical situation and circumstances of each State, and the Executive Council shall formulate plans for effecting such reduction."

And so far as practicable the private manufacture of munitions and implements of war is to be stopped. A permanent Commission is to be constituted to advise the League on the execution of the provisions of Article 8 and on military and naval questions generally (Art. 9). On any threat of war the members of the League are to have "the right to take any action that may be deemed wise and effectual to safeguard the peace of nations" (Art. 11). The prohibition of resort to war is contained in Article 12:—

> "The high contracting parties agree that, should disputes arise between them which cannot be adjusted by the ordinary processes

of diplomacy, they will in no case resort to war without previously submitting the questions and matter involved either to arbitration or to inquiry by the Executive Council, and until three months after the award by the arbitrators or a recommendation by the Executive Council, and that they will not even then resort to war as against a member of the League which complies with the award of the arbitrators or the recommendation of the Executive Council. In any case under this article the award of the arbitrators shall be made within a reasonable time, and the recommendation of the Executive Council shall be made within six months after the submission of the dispute."

The Settlement of Disputes.

THE SCHEME assumes that an attempt will first be made to settle any disputes by diplomacy. Should this fail, the parties agree to submit the whole matter to arbitration. But no permanent Court of Arbitration is contemplated. "The Court of Arbitration to which the case is referred shall be the Court agreed on by the parties or stipulated in any convention existing between them." This, however, is, it seems, only to be for what are known as "non-justiciable disputes." In addition there is to be a permanent International Court (Art. 14):—

> "The Executive Council shall formulate plans for the establishment of a permanent Court of International Justice, and this Court shall, when established, be competent to hear and determine any matter which the parties recognize as suitable for submission to it for arbitration under the foregoing article."

Both procedures are thus referred to as arbitrations, but the distinction between the two would probably be that which we have suggested. For cases where a dispute is not submitted to arbitration Article 15 provides that it shall be submitted to the Executive Council, and a unanimous report of the Council is intended to be a bar to war. But this article is long and requires careful examination.

The Sanction of the Covenant.

THE ENFORCEMENT of the covenant is provided for by Article 16:—

> "Should any of the high contracting parties break or disregard its covenants under Article 12 it shall thereby *ipso facto* be deemed to have committed an act of war against all the other members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a member of the League or not. It shall be the duty of the Executive Council in such case to recommend what effective military or naval force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."

Of the remaining articles it is sufficient to note Article 23, the publication of all treaties; Article 24, provision for the revision of treaties; Article 25, the abrogation of all obligations inconsistent with the terms of the covenant; and Article 26, provision for amendment of the covenant.

Horse-Breeding and Income Tax.

WE ARE not convinced by the reasoning of the House of Lords in *Malcolm* v. *Lockhart* (*ante*, p. 264; 35 T. L. R. 231), one of those unsatisfactory cases in which a Law Court insists on reducing a troublesome point of law into a mere question of fact to be decided by some first instance tribunal. The point at issue was clear-cut, and almost ideally simple. A farmer kept a stallion which served his own mares, and also those of other farmers and owners of horses, who paid him the usual fees. He treated these fees as part of his agricultural profits as a farmer, and claimed the benefit of assessment under Schedule B—which gives the farmer an option of choosing one year's rent or his actual profits as the basis of income-tax assessment. The surveyor assessed him for the fees under Schedule D, on the ground that the letting-out of a stallion is not an incident of the occupation of a farm, but a separate business. The Commissioners of Income-Tax found that this view was right, and after the usual intermediate proceedings the House of Lords upheld their decision. The rule of law they laid down is simple and easy to understand. Schedule B, they held, applies only to profits earned *on the farm occupied*; where a farmer gets profits *outside his farm*, he is carrying on a trade elsewhere, and is assessable for its profits under Schedule D. That is, of course, an intelligible and unquestionable principle. But then the House went on to hold that the services of a stallion must be divided into two: those rendered on the farm and those rendered elsewhere; the former assessable under Schedule B and the latter under Schedule D. If the latter are very trivial compared with the former, all ought to be assessed under Schedule B. If *vice versâ*, all ought to be assessed under Schedule D. The question which are the essential services of the stallion, those on the farm or elsewhere, is one of fact for the Commissioners to decide. Such, if we understand it, is the decision of the House. We cannot help thinking that the true view is that the use of a stallion for the farmer's own mares is not in law a profit-bearing user, and therefore not assessable at all. Its uses to earn fees from other owners is a profit-bearing user, and assessable as the profits of a trade under Schedule D, whether the stallion renders the services on the farmer's own farm or elsewhere. This reduces the question of fact for the Commissioners to decide to a mere matter of accounts and evidence—which surely is the only sphere over which the Commissioners have any jurisdiction.

Recognition of New Nations.

THE Esthonian Government seems to be the first of the new Governments on the Baltic coasts to be formally recognized by the British Courts. In *West Russian Steamship Co.* v. *Steamship Gagara* (reported elsewhere) the Court of Appeal affirmed the decision of Mr. Justice HILL setting aside a writ *in rem* in the Probate, Divorce and Admiralty Division against *The Gagara*. The plaintiffs had been registered as a limited company in Russia, and the ship had been registered under the Russian flag as owned by them. Subsequently she was seized by the Esthonian Provisional Government and condemned as prize of war. The vessel was afterwards sent to London with an armed guard on board, and proceedings *in rem* were then instituted against her. The Esthonian Government thereupon took steps to have these proceedings set aside, on the ground that the vessel was the property of a Sovereign Power, recognised as such by other Powers. The principle invoked was that laid down in *The Parlement Belge* (1880, 5 P. D. 197), viz., that by international law and the rules of international courts observed between Sovereign States, the British courts decline to exercise jurisdiction over the public property of a State which may happen to be within the court's territorial jurisdiction. The question was whether, admitting this principle, the Esthonian Government was entitled to its benefit. It appeared that the British, French, and Italian Governments had provisionally recognised the Esthonian National Council as a *de facto* independent body, and the British Government had received an informal diplomatic representative of the Esthonian Provisional Government. It was the view of the British Government that the Esthonian Government was such a Government as could set up a prize court. The Court of Appeal held that the status of the Esthonian Government, on the information supplied to the Court by the Foreign Office, did entitle it to be treated as a Sovereign Power, and that the principle of *The Parlement Belge* did apply. The proceedings *in rem* were therefore properly set aside and the order of the Court of first instance affirmed.

Legal Analogies in International Law.

IN OUR last issue (Feb. 15th) it was pointed out in the article on "The Mandatory Principle and the German Colonies" that good work had been done by the Hague Court of Arbitration in applying to international law definite and well-settled principles of national or municipal law. This was illustrated in the case of the North Atlantic Coast Fisheries Arbitration, by applying to sovereignty the analogy of the law of land ownership, and to treaties the analogy of contracts between private persons. The text of the draft of the League of Nations' Covenant, as now published in the

Times of 15th February, affords an illustration of a similar application of a rule in municipal law in aid of a satisfactory theory and practice with respect to international treaties for the future. Article 23 of the draft runs: "The high contracting parties agree that every treaty or international engagement entered into hereafter by any State member of the League shall be forthwith registered with the Secretary-General, and as soon as possible published by him, and that no such treaty or international engagement shall be binding until so registered." The necessity for registering transactions in such a way as to secure publicity for them is a familiar rule in all systems of jurisprudence, being exemplified chiefly in English law by those branches of it that relate to instruments executed by companies and securities over personal chattels. That the draft text of the League of Nations Covenant should itself contain an illustration of this application of definite principles of municipal law to international law is a strong confirmation of the value of the precedent created by the award in the North Atlantic Coast Fisheries Arbitration, and a forcible argument in favour of adhering to the principles regarding sovereignty and the construction of treaties laid down by the Hague Court of Arbitration.

Casual Employment.

THOSE philosophers who cannot decide whether the bird precedes the egg or the egg the bird may have interesting views on a question which the diligent reader of Law Reports is tempted to ask himself—namely, whether the absence of a definition in some statutes has been the cause of more litigation than the presence of a definition in other statutes, or *vice versâ*. Whether the draftsman defines his terms, or leaves them undefined, trouble seems to follow. We do not pretend to have any fixed opinion of our own as to the proper answer to our hypothetical question.

What suggests it to us just now is the perusal of *Stoker* v. *Wortham* (*ante*, p. 245; 35 T. L. R. 225), a recent decision of the Court of Appeal in a workmen's compensation case. Here the applicant had been engaged by the respondent as a "temporary cook" during the absence of the regular cook on holiday. The engagement was for fourteen days certain, but there was some evidence to shew that the applicant regarded this as merely tentative, and was prepared to remain on if wanted. On the tenth day—in strict poetic propriety it surely ought to have been the thirteenth—she slipped in the kitchen on a wet oilcloth and met with a serious accident, which resulted in a fifteen weeks' illness in hospital. There was no doubt as to the occurrence of an accident, or that it arose "out of" and "in the course of" the employment; but the arbitrator nonsuited her claim on the ground that her employment was merely "casual," and was not connected with her employer's business. And so the Court of Appeal had to consider the meaning of this word "casual" in the Workmen's Compensation Act, 1906.

The way in which the point arises under the statute is a little peculiar. It occurs, curiously enough, in a definition clause. "Workman"—the person entitled to the benefits of the statutory protection—is defined as follows in section 13:—

> "'Workman' does not include any person . . . whose employment is of a *casual nature* and who is employed otherwise than for the purposes of the employer's trade or business . . . but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour or clerical work or otherwise, and whether the contract is express or implied, is oral or in writing."

But although "workman" is defined, "casual" is not, possibly because the draftsman considered the meaning of that word clear. Or perhaps he considered that there must be an end to sub-definitions in a defining clause. If you begin by defining a phrase in terms of other phrases, and then have to define these defining terms themselves, there is obviously no end to the process. Generally speaking, however, it is recognized by logicians that a definition is inferior and imperfect when the defining term or terms is as vague as the term defined, and this breach of logical principle, we fear, is clearly committed by the draftsman of section 13. *En passant*, we may note that the definition of "workman" just quoted has another defect. A definition should be in positive terms, not negative; the definition given begins by defining "workman" negatively as not including a certain class of employment. We are left to infer that it does include all employment which is the opposite of that excluded—*i.e.*, that it includes all *non-casual* employment under a contract of service. Now, a logical definition should have been in positive terms, and should have begun by saying that the term "workman" includes all persons engaged in regular or continuous employment of the kind limited by the clause.

This criticism of the definition is not captious or hypercritical; it points out the fundamental ambiguity which has occasioned all the difficulty of interpretation that has arisen. Since "casual" employment is excluded, all "non-casual" must be included. But does "non-casual" mean "regular" employment, or "continuous," or "permanent" employment? This is difficult to say. In other words, the true opposite of "casual" is ambiguous, and it has been left to the Courts to try and find out what exactly it is by considering the policy of the Act.

Now in the leading case of *Knight* v. *Bucknill* (6 B. W. C. C. 160), the then Master of the Rolls took the view that "casual" and "regular" employment are opposite terms, and that therefore "casual" employment means employment which is not regular. "I am quite unable to give a general definition of casual as opposed to regular employment which will meet every case," he says, and he goes on to express doubts as to whether it is desirable for the Court to try and give precise limits to either terms. In the same case, however, Lord SUMNER (then HAMILTON, L.J.) took the view that the opposite of "casual" is "permanent" employment; and went on to say that there is a large class of debateable cases in which it is not easy to say whether employment is "permanent" or "temporary and casual." These cases, he considers, are questions of fact for the county court judge to decide—the usual solution which our Courts adopt when faced with insoluble legal subtleties.

It cannot be said that, in the case on which we are now commenting (*Stoker* v. *Wortham*, *supra*) the Court of Appeal has done much to elucidate the problem. Indeed, Lord Justice DUKE contrived to discover a new opposite term to "casual" which had not previously occurred to anyone—namely, "conventional" employment. He did not define this term, but apparently meant employment which would be regarded by both parties as putting them in the status of master and servant, as opposed to the mere rendering of a contractual service for reward on one or more isolated occasions. This is a possible meaning of the term, and is certainly more satisfactory than "permanent" or "continuous" as the true opposite of "casual." But, in any case, the Court as a whole did not use this phrase—or, indeed, any phrases at all—as a definition of the ambiguous term, and all the Judges contented themselves with the unsatisfactory solution that the question is one of fact for a reasonable man to decide. So long as an arbitrator's decision does not impress the Court of Appeal as unreasonable, they cannot say that he has misdirected himself in law, and his decision must be left standing. In the present case, the county court judge had held that the employment was casual; this was a reasonable view; and therefore the appeal was dismissed. Apparently, if he or another judge in a future case on the same facts took the view that the employment was not casual, this view would be equally reasonable, and would not be upset on appeal. Such is the result which follows from the failure of the Court of Appeal to tackle the problem of giving an exact definition, and applying it rigidly to the facts.

The real question at issue is just this. Does the statute mean to exclude persons who are only employed on one occasion of short duration as opposed to those who have an engagement of the length usual in the particular employment under consideration? Or does it mean to exclude persons only employed

at infrequent and irregular intervals—*e.g.*, washerwomen and window-cleaners—as opposed to those employed for some part or the whole of each week? Or does it mean persons employed because some abnormal occasion provides a job, as opposed to those normally required to fulfil the household duties—*e.g.*, a nurse called in on the occasion of a childbirth? In the first case, the opposite term is "permanent." In the second case, it is "regular." In the third case, it is "routine," or perhaps "conventional"—in Lord Justice DUKE'S sense, as opposed to a merely "contractual" service. Our own view is that the third opposition of terms is the one intended by the Legislature. The opposite of "permanent" is "temporary," not "casual"—and so the Legislature must be presumed to know. The opposite of "regular" is "irregular" or "occasional." But "casual" and "routine" are natural opposites, and in fact all the reported cases are consistent with this distinction as a *ratio decidendi*. In the present case, since the temporary cook merely replaced a permanent cook on the abnormal occasion of a holiday—a disturbance of usual domestic *routine*—and therefore her employment, being no part of the normal household routine, was essentially "casual."

Limitation Statutes and Prescription.

THE rule of English law is that title to land—to corporeal hereditaments—cannot be gained by prescription. It is only incorporeal hereditaments and such rights as the right to light, the right to support, &c., that admit of being acquired by prescription *eo nomine*. There is another rule of English law which tells us that land cannot be "owned" by a subject, and that only the reigning Sovereign can "own" English soil. Yet we constantly speak, with the full sanction of judges and text writers, of ownership of land being vested in subjects of the Crown. May we, or may we not, with equal correctness, speak of title to land being acquired by prescription? The question is really a verbal one rather than one of substance. We speak of a man owning his land, meaning that he has the fee simple. Usage does not sanction any analogous widening of the word "prescription" to include the title gained by mere length of possession. Nevertheless, the title gained by length of possession might as reasonably be called "prescriptive" as an estate in fee simple is called "ownership." Though, according to well-understood usage, title can be gained by "prescription" to incorporeal and not to corporeal hereditaments, definitions of prescription apply equally well to corporeal and incorporeal hereditaments, so far as it is a method of acquiring title. Prescription may be defined generally as a right founded on lapse of time. It is an *exceptio ratione temporis*. COKE says: "Prescription is a title taking his substance of use and time allowed by the law" (Co. Litt. 113a).

The distinction in theory between the title that may be acquired by length of time—"prescription"—to incorporeal hereditaments, and the title that may be acquired by length of time—"possession"—to corporeal hereditaments, is clearly marked in the difference of scheme between the Prescription Act, 1832, and the Real Property Limitation Acts, 1833 and 1874. Section 2 of the former and section 34 of the Limitation Act of 1833 may be taken as typical. By section 2, when an easement has been enjoyed "for the full period of forty years, the right thereto shall be deemed absolute and indefeasible." By section 34 of the other statute, "At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any . . . action or suit, the right and title of such person to the land . . . shall be extinguished." In the case of the incorporeal hereditament the Prescription Act expressly gives an "absolute and indefeasible" title to the person who has exercised the rights of an owner for the statutory period; the statute operates by way of positive and acquisitive prescription. In the case of the Limitation Act not a word is said about any acquisition of title to the corporeal hereditament by length of possession, but it is only enacted that the title of the owner who is out of possession is extinguished at the end of the statutory period. The Limitation Act may be said to operate by way of "extinctive prescription," and this phrase is actually used in this connection in a Canadian case: see *Gray* v. *Richford* (1875, 4 Can. S. C. R. 431, 454). A literal description of the operation of the Limitation Act, and one to be found in nearly these words in many decided cases, is that the Act bars the right of the owner out of possession, but does not confer title on the trespasser or disseisor in possession.

This literal description, according to which the Limitation Acts do not confer title on the person in possession, is, however, quite as misleading as the statement that a subject of the Crown cannot own land. It is constantly and fully recognized by the Courts that the Limitation Acts do operate to confer title. A Canadian case may again be usefully referred to. In *Iredale* v. *Loudon* (1908, 15 O. L. R., at p. 296) reference is made to the rights a squatter may "acquire by prescription," and in the same case (40 Can. S. C. R., at p. 317): "It is true the Statute of Limitations does not transfer the rights of the dispossessed owner to the squatter. It only purports to extinguish by lapse of time any rights to possession which ought to have been exercised during the period limited. . . . But, nevertheless, the squatter does obtain, after the expiration of the statutory period, a title recognized by law and the right to use the premises for all lawful purposes as against everyone whose title is barred or extinguished." The case for the squatter's title is indeed put still more strongly by the Privy Council in *Perry* v. *Clissold* (1908, A. C., at p. 79), for it is there said in the course of the judgment delivered by Lord MACNAGHTEN: "And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the Statute of Limitations . . . his right is for ever barred, and the possessory owner acquires an absolute title."

Since the "possessory owner"—*i.e.*, the person otherwise described as "the squatter"—does actually acquire "an absolute title" to the land, it seems hopelessly incorrect to continue to repeat that the Limitation Act only bars the right of the owner out of possession, and does not confer title on the "possessory" owner in possession. It would be difficult to find a better way of describing the method of acquiring this "absolute title" than to say it was acquired "by prescription." The accepted phraseology, however, is to say it was "acquired by possession." At any rate, whether called "possessory" or "prescriptive," the title of the "squatter" is a positive, and not a mere negative, title. Thus the theory of the literal interpretation of the Limitation Act is not carried out in practice. In practical result the title to corporeal hereditaments gained by lapse of time—*ratione temporis*—is as effectually acquired as the title to incorporeal hereditaments under the express terms of the Prescription Act.

The title "acquired by possession" has only reached its present position by slow degrees. That it is now a positive title of substantially the same value as a title by muniments is shewn in three ways: (1) It can be forced on a purchaser; (2) It can be the subject of a declaratory judgment; (3) it can be the subject of a judicial declaration of title.

As to a title by possession being forced on a purchaser, it will be sufficient to cite *Scott* v. *Nixon* (1843, 3 Dr. & War. 388, 405; *Sands to Thompson* (1883, 22 Ch. D. 614). With respect to declaratory judgments, there does not seem to be any reported instances of a purely declaratory judgment (without other relief) being given in the English courts: but on principle there seems no reason why a declaratory judgment should not be given where an order for injunction is made, and an injunction was granted in *Rains* v. *Buxton* (1880, 14 Ch. D. 537) at the instance of a plaintiff whose sole title was possession for sixty years.

Apparently there is no reported case of a judicial declaration of title being made in England under the Declaration of Title Act, 1862. There are, however, several cases in Canada of judicial declaration of title under similar statutes where

the title was one by long possession only. These Canadian statutes are usually called Quieting Title Acts. The present Ontario staute is Rev. Stat., 1914, c. 123. An Ontario case where a declaration of title was made on possessory title being shewn is in *Re Taylor* (1881, 28 Gr. 640). In another of these cases, where a title by possession was set up and declaration of title asked for, the petitioner's title was described as "a prescriptive right of twenty years' use or possession." In Ireland also a judicial declaration of title may be made under section 51 of the 21 & 22 Vict. c. 72 (setting up the Landed Estates Court), and title by possession has been held a sufficient title upon which to make a judicial declaration, though in the case cited no declaration was actually made: *Re Carson's Estates* (1870, I. R. 4 Eq. 555).

Seeing that the expression "possessory" title is used in *Perry* v. *Clissold* (*supra*), and also in the Land Transfer Acts, to denote a title not made complete by the expiry of the statutory time limit but merely good *primâ facie*, the use of the expression "prescriptive," to denote a title that is "absolute" against the former owner by virtue of long possession would be extremely convenient. It is in accordance with the ordinary meaning of the word "prescriptive," and is sanctioned by more than one reported case in Canada dealing with statutes identical with the English Real Property Limitation Acts.

Books of the Week.

The Industrial Situation.—Memorandum on the Industrial Situation After the War. The Garton Foundation. Revised and Enlarged Edition. Harrison & Sons. 2s. net.

The Unredeemed Greeks.—The Greeks in Turkey. (Reprinted from "The New Europe" of 14th and 21st November, 1918.) Eyre & Spottiswoode (Limited). 2d.

Correspondence.

The Question of Fusion.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—The system of "fusion" has been in force in the United States of America and in many of our Colonies ever since they were settled by white people, and it is strange that no one with practical experience of the system has come forward to testify in its favour. The reason may possibly be that its advantages are more imaginary than real. I practised for some years in the United States under a special licence granted by one of the Courts, and from my experience I can unhesitatingly say that under the system of fusion the work is not so well done as under our system. I also think there is no doubt that fusion does not tend to reduce legal expenses, and that it produces a lower standard of professional honour.

But it may be asked, if our system is superior, why was it not transplanted into our Colonies when they were settled? The answer is that in a new country a division of the legal profession into two branches is impracticable; the towns are small and widely separated, and in a small country town the lawyer, like the doctor, must be a general practitioner; the business is not of sufficient importance to support a specialist. But as the country develops, and the towns become "cities," the specialist makes his appearance. At the present day, in such a place as New York, there are many lawyers who occupy practically the same position as the leaders of the bar in this country. A man of this kind could, if he liked, do the work of an "attorney-at-law," but he does not do it because he has not the time; he leaves that kind of work to one of his partners. Nor does he confine himself to cases which come to his firm from their own clients; the greater part of his work probably consists of cases which are sent to him for trial or argument by other firms of lawyers; they do all the preliminary work, and he has little or nothing to do with each case until it is ready for trial or argument; he takes it up just as a K.C. in this country accepts a brief from any reputable firm of solicitors.

This result shews that the distinction between barrister and solicitor is not an absurd relic of mediævalism; it is simply an instance of the division of labour. In important and difficult cases a man cannot do both classes of work, any more than a man can specialize as a physician or surgeon and continue to work as a general practitioner.

But our system has this advantage over the American system—that it tends to make a barrister devote himself to a particular kind of legal business, and a lawyer who does that is more likely to do his work well than if he were a Jack of all trades. If anyone in this country wants to be advised on a question relating to merchant shipping, or companies, or real property, or admiralty, or patents, or any other special branch of law, his solicitor will tell him who is the best specialist to consult. And if the matter leads to litigation, it is a great advantage to the Court to have the assistance of counsel who have made a special study of that particular branch of law. Or, again, if a complicated settlement or will is required, a solicitor will generally send it to a conveyancer, although there is nothing to prevent him from doing the work himself. In the United States there are very few specialists of this kind.

It is possible that "fusion" would benefit some briefless barristers and some ambitious solicitors. I am convinced that it would not benefit the public.

AN ENGLISH BARRISTER.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—The result of the vote of the Law Society (embracing as it does only a portion of the profession) on this question will not be final, for the matter is not one for ultimate decision by either branch or by the present two branches of the profession.

I think the last word will be said outside if need be, but if we are wise we shall say it from within.

Editorial opinions expressed in legal papers are worthy of deference, but they are by no means conclusive, for it must not be forgotten that these editorial comments are written, as a rule, by "journalistic" members of the bar.

Commercial bodies are moving slowly but surely. In Manchester I am just assured by one of its leading merchants that all commercial men there are in sympathy with the recent resolution.

Sir Charles Wade, K.C., Agent-General for New South Wales, declared publicly in the *Times* this week that the public gain by saving in costs.

Such a statement from such a source within the profession is some evidence in answer to the special pleading of Mr. Disturnal, K.C., in the *Times*. This correspondent lost sight entirely of the fact that "fusion" really means "fusion," and he was, I suggest, merely raising a "bogey" to frighten solicitors when he suggested that "advocates" (as such purely), although they would become and be advocates and solicitors too, would employ outside unqualified agents to get up cases and do all the work which solicitors now do.

Surely outside agents would remain unqualified as now, and members of one united profession would retain such work for themselves. The only difference—and this is the material one—would be that the client would not have to pay two men for doing work that could be performed by one.

HARVEY CLIFTON.

CASES OF THE WEEK.

Court of Appeal.

REX *v.* **MARLBOROUGH STREET POLICE MAGISTRATE.** *Ex parte* **SAMUEL.** No. 1. 3rd February.

PRACTICE—APPEAL—WRIT OF CERTIORARI TO QUASH CONVICTION—DECISION OF DIVISIONAL COURT FINAL—"CRIMINAL CAUSE OR MATTER"—JUDICATURE ACT, 1873 (36 & 37 VICT. c. 66), s. 47, ORDER 58, RULE 10.

The decision of the Divisional Court refusing an ex parte *motion to grant a rule nisi for a writ of certiorari to quash a conviction by magistrates for the breach of regulations made for the management of a royal park is a decision in a "criminal cause or matter," and is therefore final.*

Rex v. Justices of Wiltshire (1912, 1 *K. B.* 566) *applied.*

Appeal *ex parte* from a decision of the Divisional Court, refusing to grant a rule *nisi* for a writ of certiorari to quash the conviction of a Mr. Henry Samuel for the unlawful use of obscene and blasphemous language in Hyde Park in breach of the regulations made under the Parks Regulation Act, 1872. It appeared that Mr. Samuel was walking in Hyde Park in company when he was invited to take and read some tracts pressed on him by two young women engaged in Roman Catholic propaganda. Mr. Samuel replied that he was a Jew, and to further observations by the women used language of such a nature that he was apprehended by a constable and charged and convicted of using obscene and blasphemous language, being fined £3. Under section 4 of the above Act a breach of the regulations in the schedule thereto is punishable on conviction with a fine not exceeding £5. The Divisional Court having refused the application, the applicant appealed to the Court of Appeal, and counsel on his behalf contended that he could do so under ord. 58, r. 10, within four days after the Divisional Court had refused an

ex parte application, and it was a question whether a criminal conviction could be made under the rules.

THE COURT dismissed the appeal.

SWINFEN EADY, M.R., said the application must be refused. It was well settled that no appeal to that Court lay in criminal matters, and it was also well settled that section 47 of the Judicature Act, 1873, which prohibited such appeals, must receive a wide construction. Counsel's attention had been drawn to *Reg.* v. *Fletcher* (2 Q. B. D. 43), and also to *Rex* v. *Wiltshire Justices, Ex parte Jay* (1912, 1 K. B. 566). In the present case there was a decision of the Court of King's Bench in a criminal matter, but it was said there was no judgment within section 47, because the rule *nisi* was refused. That argument was directly contrary to the decision in *Rex* v. *Wiltshire Justices* (*supra*). In that case there was only an order for costs, but it had been made in a criminal case. It was held that there was no appeal to the Court of Appeal from the refusal to grant a rule *nisi*. The matter was entirely covered by authority, and the application must be refused.

SCRUTTON, L.J., and EVE, J., concurred.—COUNSEL, *R. C. Hawkin.* SOLICITOR, *J. Barrington Mathews.*

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

"THE GAGARA." No. 2. 13th and 14th February.

INTERNATIONAL LAW — MERCHANT SHIP — SEIZURE BY ESTHONIAN NATIONAL COUNCIL AS PRIZE—ACTION IN REM—QUALIFIED RECOGNITION OF COUNCIL AS A DE FACTO INDEPENDENT SOVEREIGN POWER—IMMUNITY FROM PROCESS.

An action in rem, *being an indirect method of impleading the owner, cannot be brought against the property of a foreign sovereign.*

Appeal by the West Russian Steamship Co., of Petrograd, against a judgment of Hill, J., allowing a motion by the Esthonian National Council, asking that the writ and all proceedings in an action in which the appellants, as plaintiffs, claimed the steamship *Gagara*, now sailing under the name of *The Kajak*, and her freight should be set aside. The Esthonian National Council claimed to be the Esthonian Government and asserted that whatever rights the plaintiffs desired to establish by the action, the English courts had no jurisdiction to deal with the matter, as the Council was in the position of a sovereign body capable of exercising sovereign rights, including the right of making captures *jure belli*, and entitled to have its sovereignty respected by the courts of this country. The appellants alleged that they purchased the s.s. *Gagara* in 1914, and that she was seized by the Bolshevists in the port of Petrograd. The captors put on board a cargo of wood belonging to a Swiss company and despatched her under the red flag to Copenhagen. Her master put in at Reval, and there she was seized by the Esthonian National Council. They made out fresh bills of lading and sent her and her cargo to this country. An action was thereupon commenced by the steamship company claiming to be the lawful owners of the vessel and her freight, and asking for an injunction to restrain the Esthonian National Council from removing the vessel out of the jurisdiction of the court. A summons was taken out by the Esthonian National Council asking that the writ and all proceedings under it should be set aside on the ground that the English courts had no jurisdiction. Hill, J., in allowing the summons, said he was advised by the British Foreign Office that recognition of the Council as a sovereign power had been granted, with certain reservations. Therefore the plaintiffs must seek their remedy in the courts of Esthonia. The steamship company appealed.

BANKES, L.J., said the question was whether the Esthonian National Council was recognized by the Government of this country as having the status of a sovereign Power. If it was so recognized it was not disputed that the courts of this country would not allow that Government to be impleaded here. That principle was clearly laid down in the cases of *The Parlement Belge* (5 *r*. D. 197) and in *Mighell* v. *Sultan of Johore* (1894, 1 Q. B. 149). Hill, J., in his judgment (see 35 T. L. R. 243) had indicated the reasons why this particular case came within the principle laid down in those cases. He found that authoritative statements in the fullest sense of the word had been made to the learned Judge by the Attorney-General, and the only question for this Court was whether they established that the Esthonian Government had a status as an independent sovereign body. There was correspondence between the two Governments which had been produced that confirmed these statements. In support of the appeal it was argued that the recognition by this Government of the Esthonian Government was "conditional" and "revokable," and that that was insufficient evidence of recognition of independent sovereignty for these Courts to act upon. Such well-known writers as Westlake, Oppenheim, Hall and Hallett were cited and referred to on the point, but they appeared not to be in exact accord upon this particular point. At any rate, the conditions existing at the time the present dispute arose were widely different from those on which the writers had based their views. Referring to the correspondence it was clear that the Foreign Office fully recognized the sovereignty of the Esthonian Government, subject to the limitation that the recognition would continue only so long as certain conditions should be complied with. But at the present time the Esthonian Government was recognized as a *de facto* independent Government not only by the Foreign Office of this country, but they had received informal diplomatic representatives also from the French and Italian Governments. To permit the action to proceed would be to act contrary to the comity of nations, and contrary to the principle laid down in *The Parlement Belge* (*supra*). The appeal failed.

WARRINGTON and DUKE, L.JJ., agreed. Order accordingly.—COUNSEL, for the appellants *Inskip*, K.C., *Dumas* and *Ellis Cunliffe*; for the respondents (the Esthonian Government), *Bateson*, K.C., and *F. Hinde*. SOLICITORS, *Ince, Colt, Ince, & Roscoe*; *William A. Crump & Sons.*

[Reported by ERSKINE REID, Barrister-at-Law.]

WELD-BLUNDELL *v.* STEPHENS. No. 2. 12th and 13th December; 31st January.

ACTION (CAUSE OF)—NEGLIGENCE—AGENT—DEFAMATORY STATEMENTS IN LETTER WRITTEN BY PRINCIPAL TO AGENT—PUBLICATION OWING TO NEGLIGENCE OF AGENT—RECOVERY OF DAMAGES BY PERSON LIBELLED AGAINST PRINCIPAL—ACTION BY PRINCIPAL AGAINST AGENT—LIABILITY OF AGENT TO PRINCIPAL FOR BREACH OF CONTRACT.

The plaintiff employed the defendant, an accountant, to investigate the accounts of a company which he had largely financed. In connection with that matter he sent him a letter of instructions, which contained libellous references to third persons. The defendant's partner mislaid the letter, with the result that the third parties obtained damages against the plaintiff in respect of the publication of the libel to the defendant, the jury in each case holding that the plaintiff was actuated by malice. The plaintiff subsequently sued the defendant for damages for breach of an implied term of the contract of employment, that, as his professional adviser, he was bound to keep the plaintiff's instructions secret

Held, that, although the plaintiff could not recover the damages and costs he had had to pay in the libel actions, which in effect would be an indemnity for the wrongful act which he himself had committed, nevertheless, having proved a cause of action in contract, he was entitled to nominal damages for breach of that contract by the defendant.

Decision of Darling, J. (34 *T. L. R.* 564; 1918, *W. N.* 254), *varied.*

Appeal and cross-appeal from a decision of Darling, J., on further consideration in an action tried before him and a special jury (reported 34 T. L. R. 564). The plaintiff, who had become interested in the Float Electric Co., which manufactured mining lamps, financed it to the extent of £13,000 or £14,000. Being dissatisfied with the results of the company, he employed the defendant, a chartered accountant, and gave him a letter of instruction, in which statements were made reflecting upon a Captain Lowe, a former manager of the company, and a Mr. Comins, an accountant previously employed by the company. The defendant handed this letter to his partner, and asked him to attend to the matter. While investigating the accounts of the company at the office of the company, he seemed to have left it on the manager's table. At any rate, it was found by the manager, who read it and communicated its contents to Captain Lowe and Mr. Comins. Each of these gentlemen brought libel actions against Mr. Weld-Blundell. In neither action did the defendant appear at the trial. In each action the Judge said that the occasion was privileged, but the jury found that Mr. Weld-Blundell was actuated by express malice, and in one case they awarded £1,000 and in the other £600. On appeal the verdict in the first case was reduced to £350 by consent. The present action was then brought by Mr. Weld-Blundell against Mr. Stephens, claiming to recover as damages the amount which he had to pay as damages and costs in these two actions, which, including his own costs, amounted to £1,680. The action was based on an allegation that, the plaintiff having employed the defendant in a confidential capacity as his professional adviser, it was an implied term of the defendant's employment that he should keep secret all communications and instructions received from his principal, and should not permit such communications and instructions to be disclosed or published to others. On further consideration Darling, J., decided both points in favour of the defendant, holding that there was no such promise or term as that which the plaintiff alleged, and, therefore, no breach of duty was committed by the defendant. The plaintiff appealed. After argument, judgment was reserved.

BANKES, L.J., in the course of his judgment, said:—The learned Judge, after an extremely clear and careful summing-up, left three questions to the jury: (1) Was it the duty of the defendant to keep secret the letter of 4th May, written by the plaintiff to the defendant? (2) Did the defendant neglect his duty in regard to the said letter so that the contents thereof were disclosed, or came to the knowledge of Mr. Hirst? (3) Were the actions brought by Lowe and Comins against the plaintiff and the damages recovered by them the natural consequence of the proved negligence of the defendant? The jury answered all three questions in the affirmative, and assessed the damages at £650. The appellant's case was really founded on the negligence of the respondent's partner in not taking proper care of the letter, as a consequence of which its contents became known to the persons who subsequently brought actions for libel against him. The respondent met that case by asserting that he was under no duty not to disclose the contents of the letter, because any contract not to do so would be either an illegal contract or against public policy, and consequently unenforceable; and on the further ground that no damages

were recoverable, because the damages claimed were the direct result of the appellant's own wrong. The learned Judge decided both points in favour of the respondent. He was unable to agree with that view. There were no doubt cases to which the rule laid down by the learned Judge, that the law did not and could not imply such promise or term as that which the plaintiff alleged, might be applied, as, for instance, confidential communications to a professional adviser as to the proposed commission of a civil wrong upon an individual. A contract to keep such a communication secret might well be considered as an illegal contract, and the duty to the public to disclose the criminal or illegal intention might properly be held to override the private duty to respect and protect the client's confidence. It was contended by counsel for the respondent that, for the purpose of considering his client's duty in the matter, the appellant's letter must be treated as a criminal libel, and the appellant himself as having been guilty of a crime, and that no contract to conceal a crime could be lawful. But a contract not to disclose the fact that a crime had been committed was necessarily neither illegal nor against public policy; for example, where a solicitor had been employed to defend a prisoner who admitted to him he was guilty. Nor, in his view, was the respondent entitled to treat the appellant as a person who had committed a crime by writing and publishing the letter. The parties libelled might possibly have taken criminal proceedings, but they did not do so. They preferred to treat the letter as a civil wrong. If the appellant had been indicted it did not at all follow that he would have been convicted, and, until convicted, he was just as much entitled to say that he was innocent of the crime of libel as he was entitled to say, up to the time when a jury found that he had been actuated by express malice, that he had committed no civil wrong. But there was the further question. Assuming that the appellant had a right of action against the respondent, could he recover the special damages which he claimed? It was stating the proposition too widely to say that in no circumstances could a man recover damages for the consequences of his own wrong: see, for example, such cases as *Trinder, Anderson, & Co.* v. *Thames and Mersey Marine Insurance Co.* (1898, 2 Q. B. 114), *Crage* v. *Fry* (67 J. P. 240), *Burrows* v. *Rhodes* (1899, Q. B. 816). On the findings of the jury the appellant clearly overstepped the limits of privilege, for two juries had found that he was actuated by malice. He agreed that Darling, J., was right in saying that the appellant could not recover any portion of the special damages which he claimed, which were in substance in the nature of an indemnity against the consequences of his own wilful and deliberate wrong-doing; but, as he had proved a cause of action in contract, he was entitled to nominal damages, but without costs. The defendant, by his cross-appeal, asked that, in the event of the appellant succeeding, judgment should not be entered for the sums claimed, on the ground that they were excessive. That appeal would be dismissed.

WARRINGTON, L.J., read a judgment to the same effect.

SCRUTTON, L.J., agreed that the appeal should be allowed, but dissented on the question of damages. He saw no reason why the appellant should not be awarded the damages given him by the jury. In the result the appeal was allowed, and judgment entered for the plaintiff with 20s. damages, but without costs and the cross-appeal dismissed without costs.—COUNSEL, for the appellant, *Langdon*, K.C., *J. B. Matthews*, K.C., and *Lever*; for the respondent, *Hogg*, K.C., and *Patrick Hastings*. SOLICITORS, *Spyer & Sons*; *J. S. Blanckensee*.

[Reported by EASTON, REID, Barrister-at-Law.]

High Court—Chancery Division.

Re LAYCOCK. LAYCOCK v. SPECIAL COMMISSIONERS FOR INCOME TAX. Astbury, J. 22nd January.

ADMINISTRATION—CROWN DEBT—PRIORITY—BANKRUPTCY ACT, 1914 (4 & 5 GEO. 5, c. 59), s. 33, ss. 5 AND 7—JUDICATURE ACT, 1875 (38 & 39 VICT. c. 77), s. 10.

The common law priority for a Crown debt has not been abolished by the Bankruptcy Act, 1914.

Section 33, sub-section (5), of the Bankruptcy Act, 1914, *is limited to cases of administration by the Court, and the case of* Re Heywood (1897, 2 *Ch.* 593), *decided under section 3 of the Preferential Payments in Bankruptcy Act*, 1888, *is applicable to this section of the Act of* 1914.

This was a summons taken out against the Special Commissioners for Income Tax and a creditor of the estate of the deceased to decide a question of priorities. In 1915 W. S. Laycock was assessed for supertax up to April, 1916, in the sum of £1,191, and paid £500 on account. In March, 1916, he died intestate and insolvent, and in 1917 the plaintiff took out administration. The assessment was reduced in September, 1917, and £577 was left still payable. The secured creditors having realized their securities, and the estate, which was being administered out of court, being insolvent, the question arose whether the Crown debt of £577 ought to be paid in full in preference of all other creditors, or whether it ranked for dividend *pari passu* with the other claims. Section 33, sub-section 1, of the Bankruptcy Act, 1914, which is described in the preamble as an Act to consolidate the law relating to bankruptcy, provides that "in the distribution of a bankrupt's property there shall be paid in priority to all other debts (*inter alia*) all income tax assessed on the bankrupt up to 5th April next before the date of the receiving order," and sub-section (5) says "this section shall apply in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order." Sub-section 7 says, "subject to the provisions of this Act all debts proved in the bankruptcy shall be paid *pari passu*." These provisions bound the Crown in accordance with section 151. It was admitted that super-tax is an additional income tax. Counsel for the Special Commissioners submitted that, although section 33 (1) was inapplicable, as the assessment was up to April, 1916, after the death the Crown had still their common law right of priority. Section 3 of the Preferential Payments in Bankruptcy Act, 1888, which is reproduced as section 33 (5) of the Bankruptcy Act, 1914, is confined to cases of administration by the Court (see *Re Heywood*, 1897, 2 Ch. 593).

ASTBURY, J., after stating the facts, said: *Primâ facie* a consolidation Act must be construed as intended only to consolidate the law as previously existing, and not to create a large and substantial change in the common law in respect of a matter to which the title of the Act does not really apply. The Bankruptcy Act, 1914, is merely a consolidating Act. It has been contended that the language of section 33, sub-section (5), of the Bankruptcy Act, 1914, is perfectly general, but since the decision in *Re Heywood* (*supra*) the exactly similar section of the Preferential Payments in Bankruptcy Act, 1888, has been confined to Court administrations, and in these circumstances section 33, sub-section 5, must be similarly limited. The Crown debt of £577 must therefore be paid in full in preference to the other debts.—COUNSEL, *Whinney; Sheldon; Philip Stokes*. SOLICITORS, *Johnson, Weatherall & Sturt; Woodcock, Ryland & Parker; the Solicitors for the Inland Revenue*.

[Reported by L. M. MAY, Barrister-at-Law.]

CASES OF LAST SITTINGS.

High Court—Chancery Division.

MORRISON v. BARKING CHEMICALS CO. (LIM.). Sargant, J. 20th December.

PRINCIPAL AND SURETY—FLOATING GUARANTEE OF LIMITED AMOUNT—DEMAND BY CREDITOR — NOTICE — AMOUNT OF LIABILITY UNASCERTAINED.

Where a guarantee to a bank contained special provisions as to a demand for payment by the bank and notice to crystalize the guarantee by the guarantor, and neither of these provisions had been complied with,

Held, that the guarantor could not commence an action for the immediate determination of his guarantee having regard to these special conditions, because when he so commenced it, there was no existing liability on him to pay under the guarantee.

Ascherson v. Tredegar Dry Dock (1909, 2 *Ch.* 401) *distinguished*.

This was an action in which the plaintiff sought to be relieved from a guarantee in writing given on 22nd August, 1917, to a bank whereby the plaintiff, in consideration of the bank making or continuing advances to the defendant company (the principal debtors), guaranteed the payment on "demand" by the bank of all moneys due to the bank from the company on current account or in other usual ways as therein specified. It was a continuing guarantee to the extent of £5,000 only at any time. The guarantee provided that the plaintiff might, by giving three months' notice in writing to the bank, determine the guarantee so far as regarded himself, at the expiration of which notice the extent of his liability should be ascertained. The plaintiff became apprehensive about his liability, and requested the company to relieve him of it either by satisfying the bank or by finding another security. The company did nothing, so he commenced this action against the company to be relieved, and asked that the company should pay him £5,000 on his undertaking to pay that sum to the bank in discharge of his liability, or in the alternative for a declaration that the company was liable to pay to the bank £5,000, and an order that the company do pay that amount to the bank with a direction to the bank to appropriate that payment to his liability.

SARGANT, J., after stating the facts, said:—The present case differs from *Ascherson* v. *Tredegar Dry Dock* (1909, 2 Ch. 401). In that case the guarantee had come to an end. The amount payable under it had been ascertained, while, on the other hand, in the present case neither of the preliminary requirements made necessary by the guarantee before the amount due is ascertainable has been fulfilled. No demand has been made by the bank, nor has the three months' notice been given by the plaintiff to the bank. That being so, there is no existing liability on the plaintiff to pay the bank £5,000. The plaintiff is asking for the immediate determination of his liability which, in my opinion, he is not entitled to, in view of the fact that he guarantee contained special provisions for the ascertainment of his liability at a future date which has not been complied with. I accordingly dismiss the action.—COUNSEL, *Harold S. Simmons; Alexander Grant*, K.C., and *T. Edwards Forster*. SOLICITORS, *Bernard Baines; Birkbeck, Yeo, & Co.*

[Reported by L. M. MAY, Barrister-at-Law.]

New Orders, &c.

Draft Rules of the Supreme Court (February), 1919, dated 3rd February, 1919.

We, the Rule Committee of the Supreme Court, hereby make the following rules :—

ORDER XIV.

1. *Costs of application under Order XIV.*]—Rule 9 (*b*) of Order XIV. shall be annulled, and the following rule substituted :

(*b*) If the Plaintiff makes an application under this Order where the case is not within the Order, or where the Plaintiff, in the opinion of the Judge, knew that the Defendant relied on a contention which would entitle him to unconditional leave to defend, the application may be dismissed with costs to be paid forthwith by the Plaintiff.

ORDER XIX.

2. The following rules shall be inserted in Order XIX., after Rule 7 :—

7A. *Application by letter for particulars.*]—Before applying for particulars by summons or notice, a party may apply for them by letter. The costs of the letter and of any particulars delivered pursuant thereto shall be allowable on taxation. In dealing with the costs of any application for particulars by summons or notice, the provisions of this rule shall be taken into consideration by the Court or Judge.

7B. *Time for delivery of particulars.*]—Particulars of a claim shall not be ordered under Rule 7 to be delivered before Defence unless the Court or Judge shall be of opinion that they are necessary or desirable to enable the Defendant to plead or ought for any other special reason to be so delivered.

ORDER XXXI.

3. Rule 2 of Order XXXI. shall be annulled and the following rule substituted :—

2. *Application for leave to deliver interrogatories.*]—A copy of the interrogatories proposed to be delivered shall be delivered with the summons or notice of application for leave to deliver them at least two clear days before the hearing thereof (unless in any case the Court or Judge shall think fit to dispense with this requirement) and the particular interrogatories sought to be delivered shall be submitted to and considered by the Court or Judge. In deciding upon such application, the Court or Judge shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to any matter in question, and leave shall be given as to such only of the interrogatories as shall be considered necessary either for disposing fairly of the cause or matter or for saving costs.

4. The following rule shall be inserted in Order XXXI., immediately after Rule 13 :—

13A. *Power to order list of documents in lieu of affidavit.*]—On the hearing of any application for discovery of documents the Court or Judge in lieu of ordering an affidavit of documents to be filed may order that the party from whom discovery is sought shall deliver to the opposite party a list of the documents which are or have been in his possession, custody or power relating to the matters in question. Such list shall as nearly as may be follow the form of the affidavit in the Form No. 8 in Appendix B. Provided that the ordering of such list shall not preclude the Court or Judge from afterwards ordering the party to make and file an affidavit of documents.

5. Sub-rule 3 of Rule 19A of Order XXXI. shall be annulled and the following rule substituted therefor :—

19A. *Power to order discovery of particular document or class of documents.*]—(3) The Court or a Judge may on the application of any party to a cause or matter at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any particular document or documents or any class or classes of documents specified or indicated in the application is or are, or has or have at any time been, in his possession, custody or power : and if not then in his possession, custody or power when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has or has at some time had, in his possession custody or power the particular document or documents or the class or classes of documents specified or indicated in the application, and that they relate to the matters in question in the cause or matter, or to some or one of them.

ORDER XXXVI.

6. The following rule shall be inserted in Order XXXVI., immediately after Rule 1 :—

1A. *Power to certify for and direct speedy trial.*]—On the hearing of a Summons under Order XIV. or any adjournment thereof or of a Summons for Directions or any adjournment thereof or of any application on notice thereunder or of any Summons it shall be lawful for the Court or Judge if it appears that the action cause issue or matter is one which ought to be tried at any early date to certify that the same should be tried speedily and to fix the mode of trial. If the Court or Judge so certifies either party may apply to the Judge in charge of the list of actions for trial in Middlesex in the mode of trial fixed, or to the Judge in Chambers to fix an early date for the trial of such action cause issue or matter, and such Judge may, if in his discretion he thinks fit so to do, dispense with any notice of trial and fix the place and date of trial or direct that the trial be expedited and the action cause issue or matter placed in the list for trial in such position as he may think fit.

7. The following rule shall be inserted at the end of the first paragraph of rule 10 of Order XXXVI. :—

Matters to be considered in fixing place of trial.]—In fixing the place for the trial of any action cause issue or matter the Court or Judge shall have regard to the convenience of the parties and their witnesses and the date at which the trial can take place, and when a view may be desirable the locality of the object to be viewed, and to the other circumstances of the case, including (*inter alia*) the wishes of and expense to the parties, the relative facilities for trial in Middlesex or at the Assizes and the burden imposed on jurors.

8. *Order XXXVI., rule* 10 (*a*)-(*f*), *and rule* 22B *annulled.*]—Order XXXVI., rule 10 (*a*)-(*f*), both inclusive, and rule 22B shall be annulled.

9. The words " subject to Rule 10 (*a*) " in Order XXXVI., rule 1, shall be omitted and the following rule shall be substituted for Order XXXVI., rule 10 (*a*)-(*f*) :—

10. *Trials on Circuit.*]—(*a*) There shall be kept at the Central Office lists of all actions in which by an Order drawn up in the Central Office the place of trial is fixed at any place other than at one of the excepted places as hereinafter defined. A separate list shall be kept for each such place. Once in every fortnight there shall be sent to the Associate of the Circuit on which each such place is a copy of such list relating to such place or of any addition thereto since the last list was sent.

(*b*) There shall be kept in each District Registry a list of all actions in which by an Order made or drawn up in that Registry the place of trial is fixed at a place other than one of the excepted places as hereinafter defined. A separate list shall be kept for each such place. Once in every fortnight there shall be sent from the Registry to the Associate of the Circuit on which such place is a copy of such list relating to such place or of any addition thereto since the last list was sent.

(*c*) In the event of the place or mode of trial of any action included in such list being changed the Central Office or District Registrar respectively by whom the list in which such action was included was sent shall forthwith send to the Associate to whom the list was sent notice of such change and if the place to which the place of trial is changed is on a different circuit also to the Associate of the Circuit on which the latter place is.

(*d*) The lists referred to in sub-rules (*b*) and (*c*) shall specify the names of the parties and their respective solicitors and the nature of the action and place and mode of trial fixed.

(*e*) In the event of any action in which the place of trial is fixed elsewhere than at one of the excepted places being discontinued dismissed or otherwise dealt with or disposed of so that no trial thereof will be necessary, the party having the carriage of the order fixing the place of trial or his solicitor shall forthwith give notice to the Associate of the Circuit on which such place is of the fact that such action is so discontinued dismissed or otherwise dealt with or disposed of.

(*f*) In the case of an action in which the place of trial is fixed elsewhere than at one of the excepted places the party having the carriage of the order fixing the place of trial or his solicitor shall not less than three weeks before the Commission day at such place give notice to the Associate of the Circuit on which such place is stating whether it is probable that the action will be tried at such place at such Assizes, and of the length of time that the trial is likely to occupy.

(*g*) The costs of any notice properly given under sub-rules (*e*) or (*f*) of this rule may be allowed on taxation.

(*h*) The excepted places referred to in this rule are London, Middlesex, Manchester, Liverpool, Leeds, Birmingham, Cardiff, Swansea and Bristol.

(*i*) In this rule the word " action " includes cause matter or issue.

10. The following rule shall be substituted for Order XXXVI., rule 22B :—

22B. *Entry for trial*]—After notice of trial has been given in any action cause matter or issue to be tried elsewhere than in London or Middlesex, Manchester, Liverpool and such other places as the Lord Chancellor shall from time to time direct, either party may, at any time, not less than seven days, before the commission day appointed for such place, enter the action cause matter or issue for trial at the next Assizes in the District Registry (if any) of the city or town where the trial is to be had or with the Associate. No later entry shall be allowed, except by leave of a Judge going that Circuit, or by order of a Judge at Chambers, subject to the consent of a Judge going that Circuit.

11. The following rule shall be inserted in Order XXXVI. immediately after Rule 34 :—

34A. *Power to change place of or postpone trial.*]—In the event of the Judge at any place on circuit other than one of the excepted places as defined in rule 10 (*h*) of this Order being of opinion that

any action cause matter or issue in the list for trial at that place cannot, owing to the time allotted for the Assize at that place or for any other sufficient reason, be conveniently tried at that place, it shall be lawful for such Judge, on or without an application for that purpose, to change the place of trial to some other place on the same Circuit or to postpone the trial to another assizes.

ORDER LIV.

12.—(1) The following rules shall be inserted in Order LIV. immediately after rule 21 :—

22. *Power to direct hearing in Court.*]—In the King's Bench Division the Judge in Chambers if he thinks it desirable that any Summons, Appeal or Application owing to its importance or the length of the time likely to be occupied or for any other reason should be heard in Court may direct that the same be so heard or may adjourn the same to be so heard. Provided that any decision in Court on any such Summons, Appeal or Application shall be deemed to be a decision at Chambers.

22A. *Appeals from Masters in K.B.D. on trials, etc.*]—(1) There shall be a right of Appeal from any finding decision order or judgment arrived at made given directed or entered by any Master of the King's Bench Division on the hearing or determination by him of

(*a*) Any trial or reference of any action cause issue or matter (including trials directed under Order XIV., Rule 7), or any assessment of damages and whether by consent or otherwise, or

(*b*) Any interpleader or garnishee matter or issue whether by way of summary decision or adjournment of the interpleader or garnishee summons or order *nisi* or on an issue directed or otherwise and whether by consent or otherwise.

(2) Such appeal shall be to a Divisional Court by notice of motion. The notice shall be in writing and shall state whether the whole or any and if so what part only of the finding decision order or judgment is appealed from and shall state concisely the grounds of the Appeal.

(3) The notice shall be a seven days' notice and shall be served and the appeal entered in the Crown Office within 21 days after the finding decision order or judgment appealed from unless such time shall be extended by the Master or the Court or a Judge.

(4) Such appeal shall be no stay of proceedings unless the Master or the Court or a Judge shall otherwise order.

(5) In this rule Master shall include a District Registrar.

(2) In Order LIV., rule 21, the words "except in the cases provided for in rule 22A" shall be added between the words "may" and "appeal" in the first sentence thereof.

13. *Order LIV. rules* 30, 31 *and* 33 *to* 41 *annulled.*]—Rules 22, 30 and 31 and 33 to 41, both inclusive, of Order LIV. are hereby annulled.

ORDER LV.

14. *Additional sub-head of Order LV. rule* 2.]—The following sub-head shall be inserted in Order 55, Rule 2, immediately after the present sub-head (7) thereof, namely :

(8) Applications under the Rules of the Board of Trade dated June 6th, 1910, and made under the Assurance Companies Act, 1909, for the investment (either originally or by way of variation) of moneys or funds lodged in Court as deposits under that Act or for the payment of interest dividends or income on any such moneys or funds.

(*To be continued.*)

War Orders and Proclamations, &c.

The *London Gazette* of 14th February contains the following, in addition to matters printed below :—

1. An Order in Council, dated 14th February, further amending the Proclamation, dated 10th May, 1917, and made under Section 8 of the Customs and Inland Revenue Act, 1879, and Section 1 of the Exportation of Arms Act, 1900, and Section 1 of the Customs (Exportation Prohibition) Act, 1914, whereby the exportation from the United Kingdom of certain articles to certain or all destinations was prohibited.

2. Foreign Office (Foreign Trade Department) Notices, dated 5th and 6th February, that certain names have been added to, and others removed from, the list of persons and bodies of persons to whom articles to be exported to China and Siam may be consigned.

3. A Notice that, under the Trading with the Enemy Amendment Act, 1916, Orders have been made by the Board of Trade requiring 3 more businesses to be wound up, and also an Order revoking the Order made on 3rd August, 1917, requiring the undermentioned business to be wound up :—

478. Julius Hatschek, 36, Basinghall Street, London, E.C., Manufacturers' Agent. 12 February, 1919.

The *London Gazette* of 18th February contains the following :—

4. An Order in Council, dated 10th February, extending certain Defence of the Realm Regulations to the Isle of Man; substituted for the Order published in the *London Gazette* of 11th February.

5. A Foreign Office (Foreign Trade Department) Notice, dated 14th February, that certain names have been added to, and a name removed from, the list of persons, and bodies of persons, to whom articles to be exported to China may be consigned.

6. A Notice that an Order has been made by the Board of Trade, under the Trading with the Enemy Amendment Act, 1918, for the realisation and distribution of the assets of the undermentioned business :—

566. Henry Hill & Co. (Limited), 73, Wicklow-street, London, W.C. 1, Gas Mantle Manufacturers.

7. A further Notice that licences under the Non-Ferrous Metal Industry Act, 1918, have been granted by the Board of Trade to certain companies, firms, and individuals. The present list contains 23 names.

A Proclamation

REVOKING A PROCLAMATION, DATED THE 17TH DAY OF JULY, 1917, PROHIBITING THE EXPORTATION FROM THE UNITED KINGDOM OF DESIGNS FOR AIRCRAFT.

[In substitution for a Proclamation published in the *London Gazette* of Tuesday, 11th February, 1919, page 2151.]

Whereas by a Proclamation, dated the Seventeenth day of July, 1917, made in pursuance of Section 8 of the Customs and Inland Revenue Act, 1879, and Section one of the Customs (Exportation Prohibition) Act, 1914, We thought fit, by and with the advice of Our Privy Council, to prohibit the exportation from the United Kingdom of the following articles, that is to say, drawings, designs, specifications, and other descriptions in writing of any kind of aeroplanes or other aircraft, or of engines, or other accessories of aircraft;

And whereas it appears to Us that the said Proclamation should be revoked :

Now, therefore, We, by and with the advice of Our Privy Council, hereby proclaim, direct and ordain, that the said Proclamation of the Seventeenth day of July, 1917, shall be, and the same is hereby, revoked.

10th February. [*Gazette*, 14th February.

Admiralty Order.

MARINE BOX CHRONOMETERS ORDER, 1917.

Notice of Cancellation.

Notice is hereby given, that the Lords Commissioners of the Admiralty have cancelled as from the date hereof the Marine Box Chronometers Order, 1917, made by them on the 4th day of August, 1917.

17th February. [*Gazette*, 18th February.

[The Order was published in the *London Gazette* dated 21st August, 1917.]

Army Council Orders.

THE COLOURED AND LAPPETT WOOL PERMIT, 1919.

Whereas by the Wool and Tops (Dealings) Order, 1917, as amended, the Wool (Colonial Fellmongers) Order, 1918, and the sale of Wool (Great Britain) Order, 1918, as amended, the Army Council took possession of certain wool taken from the skins of sheep or lambs in Great Britain :

And whereas it is expedient that all Coloured and Lappett wool produced from sheep and lamb skins during the process of manufacture into rugs or mats should be dealt in without further restriction :

Now therefore in pursuance of the powers conferred upon them by the Defence of the Realm Regulations, the Army Council hereby give notice as follows :—

(1) Notwithstanding anything in the Wool and Tops (Dealings) Order, 1917, as amended, the Wool (Colonial Fellmongers) Order, 1918, and the Sale of Wool (Great Britain) Order, 1918, as amended, dealings in Coloured and Lappett wool produced from sheep and lamb skins during the process of manufacture into rugs or mats are permitted without restriction.

(2) This Order may be cited as the Coloured and Lappett Wool Permit, 1919.

12th February. [*Gazette*, 18th February.

NOTICE.

In pursuance of the powers conferred upon them by the Defence of the Realm Regulations, the Army Council hereby give notice that the Wool (Restriction of Consumption), No. 3 Order, 1917, is hereby cancelled.

12th February. [*Gazette*, 18th February.

NOTICE.

In pursuance of the powers conferred upon them by the Defence of the Realm Regulations, the Army Council hereby give notice that the Women's Boots (Uppers) Order, 1917, and the Women's Boots (Uppers) Amendment Order, 1918, are cancelled.

13th February. [*Gazette*, 18th February.

NOTICE.

In pursuance of the powers conferred upon them by the Defence of the Realm Regulations, the Army Council hereby give notice that the Wood Noils (Control) Order, 1918, is hereby cancelled.

15th February. [*Gazette*, 18th February.

Ministry of Munitions Orders.

THE RAILWAY MATERIAL (SECOND-HAND) (PARTIAL SUSPENSION) ORDER, 1919.

In reference to the following Order made by the Minister of Munitions, namely :—

The Railway Material (Second-hand) Order, 1916, dated the 29th December, 1916.

the Minister of Munitions hereby orders as follows :—

(1) The operation of the said Order is hereby suspended on and after the date hereof until further notice except in so far as relates to Wagons of all types.

(2) Such suspension shall not affect the previous operation of the said Order or the validity of any action taken thereunder, or the liability to any penalty or punishment in respect of any contravention or failure to comply with the said Order prior to such suspension, or any proceeding or remedy in respect of such penalty or punishment.

(3) This Order may be cited as The Railway Material (Second-hand) (Partial Suspension) Order, 1919.

7th February. [*Gazette*, 7th February.

THE PRIORITY OF WORK (PARTIAL SUSPENSION) ORDER, 1919.

In reference to the following Order made by the Minister of Munitions, namely :—

The Priority of Work Order, dated the 8th March, 1917,

the Minister of Munitions hereby orders as follows :—

1. The operation of the said Order and the issue of certificates and permits thereunder are hereby suspended on and after the 1st February, 1919, except as hereinafter provided :—

(*a*) On and after the 1st February, 1919, priority shall be given to work and materials in accordance with any special directions or regulations issued in writing by or under the authority of the Minister of Munitions.

(*b*) All priority certificates and permits issued before the 1st February, 1919, whether issued by a Government Department or by any ordering person, firm or corporation, shall, unless previously withdrawn or suspended by public notice or otherwise, continue to be operative until the 1st March, 1919, but shall cease to be operative on that date.

2. Such suspension shall not affect the previous operation of the said Order or the validity of any action taken thereunder or the liability to any penalty or punishment in respect of any contravention or failure to comply with the said Order prior to such suspension or any proceeding or remedy in respect of any such penalty or punishment.

3. This Order may be cited as The Priority of Work (Partial Suspension) Order, 1919.

7th February. [*Gazette*, 7th February.

THE AGRICULTURAL AND DAIRY MACHINERY IMPLEMENTS AND VEHICLES (SUSPENSION) ORDER, 1919.

In reference to the following Orders made by the Minister of Munitions, namely :—

The Agricultural Machines, Implements and Vehicles (Manufacture) Order, 1917, dated the 10th January, 1917, and

The Agricultural and Dairy Machines, Implements and Vehicles (Sale) Order, 1918, dated the 21st June, 1918.

the Minister of Munitions hereby orders as follows :—

(1) The operation of the said Orders is hereby suspended on and after the 14th February, 1919, until further notice.

(2) Such suspension shall not affect the previous operation of the said Orders or either of them or the validity of any action taken thereunder or the liability to any penalty or punishment in respect of any contravention or failure to comply with the said Orders prior to such suspension or any proceeding or remedy in respect of such penalty or punishment.

(3) This Order may be cited as The Agricultural and Dairy Machinery, Implements and Vehicles (Suspension) Order, 1919.

14th February. [*Gazette*, 14th February.

Agricultural Wages Board (England and Wales) Order.

FURTHER DEFINITION OF EMPLOYMENT WHICH IS TO BE TREATED AS OVERTIME EMPLOYMENT FOR THE PURPOSE OF THE APPLICATION OF THE DIFFERENTIAL RATES OF WAGES.

The Agricultural Wages Board (England and Wales) hereby give notice, as required by paragraph 4 of the Agricultural Wages Regulations, 1918, that they have made the following Order :—

1. For the purpose of the application of all differential rates for overtime fixed by any Order of the said Board, and notwithstanding any reference in any such Order to the hours of employment customary in any area in the case of any special class of workmen, the definition of employment which is to be treated as overtime employment is hereby extended so as to include the following employment, that is to say :—

All employment in excess of 6½ hours on a Saturday or on such other day (not being Sunday) in every week as may be agreed between the employer and the worker.

2. Provided that any time spent by Horsemen, Cowmen, Shepherds, Teammen and other classes of Stockmen in connection with the feeding and cleaning of stock shall be excluded from the foregoing extension of the definition of overtime employment.

The above Order shall come into operation on the third day of March, 1919.

18th February. [*Gazette*, 18th February.

Food Orders.

THE MILK (LOCAL DISTRIBUTION) ORDER, 1918.

PART I.

1. (*a*) A Food Committee or any person authorized by them may :—

(i) direct any person who in the ordinary course of his business has been in the habit of supplying or delivering milk by retail in their district from premises within their district, to supply or deliver milk to any consumer or class of consumers in priority to any other person ; and

(ii) where any person has in the course of his business regularly supplied or delivered milk by retail to a consumer in the district from premises outside the district, direct such person to supply or deliver milk to such consumer in priority to any other customer, unless such customer is a person holding a priority certificate for milk issued by or under the authority of a Food Committee ; and

(iii) direct any person selling milk by retail within their district to deliver in that district only within such parts thereof as the Committee may from time to time prescribe.

(*b*) Directions given under this clause may be in respect of a class of persons as well as of individual persons, and may prescribe the amount to be supplied under this clause to any person or class of persons.

(*c*) Every person to whom any direction is given under the powers conferred by this clause shall comply with such direction.

(*d*) The power conferred by sub-clause (*a*) (i) may also be exercised in respect of Condensed Milk, Dried Milk and Milk Preparations, but only with the consent of the Divisional Food Commissioner for the division within which the district is situate.

(*e*) In exercising the powers contained in this clause a Food Committee shall observe any instructions from time to time given by the Food Controller or by the Divisional Food Commissioner, but the validity of any such direction shall not be questionable on the ground that such instructions have not been complied with.

(*f*) Sub-clauses (i) and (ii) of Clause 14 (*a*) of the Milk (Winter Prices) Order, 1918 [S.R. & O., No. 1165 of 1918], are hereby revoked, without prejudice to any proceedings in respect of any previous contraventions thereof, and so that all directions given thereunder shall continue in force and have effect as if given under this clause.

PART II.

2. Where a Food Control Committee resolves, with the previous consent in writing of the Divisional Food Commissioner for the division within which the district is situate, to apply this part of this Order in their district, the following provisions of this part of this Order shall have effect:—

(*a*) A person residing in the district shall not obtain or attempt to obtain any milk for household consumption except—

(i) From the retailer with whom he is registered for the purpose in accordance with any instructions of the Committee; and

(ii) In compliance with any instructions that may be given by the Committee.

(*b*) A retailer shall not supply or offer to supply any milk for household consumption to any person residing within the district except to a person who is so registered with him, and in compliance with any such instructions.

(*c*) A retailer shall not supply or offer to supply from any premises situate in the district, or from any cart or barrow used for the purposes of delivering milk from those premises, any milk for household consumption to any person residing outside the district except to a person who is so registered with him and in compliance with any such instructions.

3. Where a Food Committee have prescribed a maximum amount of milk which may be obtained by any person for household consumption in any specified period, not more than such amount may in the period so specified be supplied by the dealers affected by Clause 2 to any of the customers for the time being registered for the purposes of that clause.

4. No retailer shall in any specified period supply or offer to supply to any customer within or without the district more than the specified amount, if any.

5. The specified amount and specified period shall be the amount and period, if any, specified by the Committee, but so that the amount so specified shall not exceed such amount as may from time to time be fixed by the Divisional Food Commissioner for the purpose.

6. Until the contrary be proved, it shall be presumed that milk supplied or offered or attempted to be supplied or obtained is supplied, obtained or offered or attempted to be supplied or obtained for household consumption.

7. The Committee may, with the consent of the Divisional Food Commissioner, cause to be used for the purposes of this Order in accordance with any instructions of the Committee any Ration Book or other Ration document issued under the Rationing Order, 1918.

8. Milk may be obtained for the purposes of a Catering Establishment, Institution or Residential Establishment within the district only:—

(*a*) From the retailer or other dealer with whom the Catering Establishment or Institution is registered for the purpose under this Order and in accordance with any directions of the Committee; and

(*b*) Where an authority is issued by the Committee for the purpose of this clause, only under and in accordance with such authority.

9. A person shall not make or knowingly connive at the making of any false statement in any application, return, or other document made in connection with or for any of the purposes of this Order, or make or knowingly connive at the making of any false statement for the purpose of obtaining any milk or obtain or attempt to obtain any milk where any such false statement on the relative application or return has been made.

10. The Committee may by instructions require any person who sells or delivers milk by retail within their area, and who is not registered pursuant to the Milk (Registration of Dealers) Order, 1918 [S. R. & O., No. 24 of 1918, as amended by No. 1306 of 1918], with that Committee, to be registered with them in such manner as they may think fit, and all such instructions shall be complied with.

11. Every retailer with whom persons in the district of a Committee are registered for the supply of milk shall, as and when required by a Food Committee, furnish such particulars relating to his registered customers and his dealings in, and stocks of, milk, as may be required.

12. For the purposes of this part of this Order:—

"Retailer" shall include any person supplying milk by retail.

"Milk" shall include, in addition to milk ordinarily so called, butter milk, separated milk and skimmed milk, but does not include condensed milk, dried milk, or milk preparations.

"Catering Establishment," "Institution" and "Residential Establishment" shall severally have the same meanings as they have in the Rationing Order, 1918.

PART III.

13. Infringements of this Order are summary offences against the Defence of the Realm Regulations.

14. (*a*) This Order may be cited as the Milk (Local Distribution) Order, 1918, and shall come into force on the 1st January, 1919.

(*b*) This Order shall not apply to Ireland.

19th December.

THE CANNED MEATS (REQUISITION) ORDER, 1918.

Notice.

The Food Controller hereby orders that until further notice Clause 2 of the above-mentioned Order [S. R. & O., No. 1094 of 1918] shall not apply to any Canned Meats which may arrive in the United Kingdom after the 16th January, 1919.

16th January.

THE CATTLE FEEDING STUFFS (DISTRIBUTION) ORDER, 1918.

General Licence.

Where a person who is named as a supplier in any certificate or certificates granted under the above-named Order [S. R. & O., No. 1508 of 1918] has supplied or has made provision for the supply of such quantities of any class of Cattle Feeding Stuffs as are mentioned in every such certificate, he may, without regard to the restrictions imposed by the above-named Order, dispose in such manner as he shall think fit of the residue of such class of Cattle Feeding Stuffs remaining in his hands, and such Cattle Feeding Stuffs may be acquired by any other person accordingly, and the General Licence dated the 18th December, 1918 (S. R. and O., No. 1671 of 1918), is hereby revoked.

16th January.

NOTICE OF REVOCATION.

The Food Controller hereby revokes the Orders mentioned in the Schedule, but so that such revocation shall be without prejudice to any proceedings in respect of any contravention thereof.

16th January.

The Schedule.

S. R. & O.

No. 593 of 1918. The Gooseberries (Sales) (England and Wales) Order, 1918.

No. 621 of 1918. Order, dated the 7th June, 1918, amending the Gooseberries (Sales) (England and Wales) Order, 1918.

No. 641 of 1918. The Soft Fruit (Sales) Order, 1918.

No. 813 of 1918. The Soft Fruit (Sales) (Amendment) Order, 1918.

No. 733 of 1918. The Strawberries (Retail Prices) Order, 1918.

No. 936 of 1918. The Plums (Sales) Order, 1918.

No. 1053 of 1918. The Blackberries Order, 1918.

No. 1054 of 1918. The Damson (Sales) Order, 1918.

THE MARGARINE (DISTRIBUTION) ORDER, 1918. THE RATIONING ORDER, 1918.

Authorisation.

The Food Controller hereby authorizes and directs that as on and from the 12th January, 1919, until further notice every permit issued or to be issued on Form N. Fats 5 under the provisions of the above Orders [S. R. & O., Nos. 360 and 894 of 1918], or either of them, authorizing a supply of margarine to a person for the purposes of a retail business in margarine or a catering establishment or institution shall be valid for the amount stated upon the face of such permit and an additional amount of 25 per cent.

16th January.

NOTICE OF REVOCATION.

The Food Controller hereby revokes the Orders mentioned in the Schedule as from 31st January, 1919, without prejudice to any proceedings in respect of any contravention thereof.

24th January.

The Schedule.

S. R. & O.

Nos. 635 & 1038 of 1918. The Raw Beef and Raw Mutton Fat (Licensing of Purchases) Order, 1918, as amended.

Nos. 637 & 1038 of 1918. The Home Melt Tallows and Greases (Requisition) Order, 1918, as amended.

No. 1118 of 1918. The Tallow and Dripping (Restriction of Export and Import) Order, 1918.

No. 1195 of 1918. The Bone Products (Requisition) Order, 1918.

Nos. 1198 & 1503 of 1918. The Bones (Licensing of Purchasers) Order, 1918, as amended.

THE BEEHIVE SECTION (MAXIMUM PRICES) ORDER, 1918: REVOCATION.

The Food Controller hereby revokes the Beehive Section (Maximum Prices) Order, 1918 [S. R. and O., No. 521 of 1918], but without prejudice to any proceedings in respect of any contravention thereof.

24th January.

THE CATTLE FEEDING STUFFS (MAXIMUM PRICES) ORDER, 1918.

Notice.

In exercise of the powers reserved to him by clause 1 (*a*) of the above Order [S. R. and O. No. 173 of 1918] and of all other powers

enabling him in that behalf, the Food Controller hereby prescribes that on and after the 27th January, 1919, the maximum price for Compound Cakes and Meals (made from two or more ingredients where no oil is expressed in the process of manufacture) shall be either—

(i) a price not exceeding by more than 50s. per ton, or such other amount as may from time to time be prescribed by the Food Controller, the total of the cost to the maker of the ingredients used as delivered at his factory; or

(ii) a price not exceeding the highest maximum price for the time being in force under the above Order for home manufactured cake and meal,

whichever shall be the lower price.

24th January.

THE SUGAR ORDER, 1917.

Authorization.

The Food Controller hereby authorizes and directs that on and after the 26th January, 1919, until further notice every authority and voucher issued or to be issued under the provisions of the above Order [S. R. and O. No. 1049 of 1917] authorizing a supply of sugar to a person for the purposes of a retail business shall be valid for the amount stated upon the face of such authority and voucher and an additional amount of 50 per cent.

27th January.

The following Orders have also been issued:—

Order dated 16th January, 1919, amending the Apples (Prices) Order, 1918.

The Meat (Maximum Prices) Order, 1917. Direction under dated 27th January.

Societies.

The Law Society.

MINISTRY OF JUSTICE—FUSION OF THE PROFESSION.

The Vice-President (Mr. W. A. Sharpe, London) presided at the Law Society's Hall on Wednesday, at a meeting called to hear an address by M. C. Smeesters, O.B.E., Avocat, of Belgium, and Secretary to the Official Belgian Committee, on "The Ministry of Justice and Fusion of the Legal Profession as they Exist in Belgium." Among those present were Sir Walter Trower and Mr. Samuel Garrett (members of the committee) and Mr. E. R. Cook (Secretary).

The VICE-PRESIDENT, in introducing M. Smeesters, regretted the unavoidable absence of the President. It was thought that at the present moment, when both the subject of the Ministry of Justice and the fusion of the profession had been under discussion by the Society, it would be well that there should be information given with regard to what had been done in other countries in these respects.

M. SMEESTERS spoke with pleasure of the friendship which existed between Great Britain and Belgium, and said he hoped for a closer and more frequent co-operation between Belgian advocates and English solicitors. Already many big British firms had opened new branches at Antwerp, and he looked confidently to the future of the city, when he saw that British commercial firms would take the place which before the war had been occupied by German firms. There were in Belgium, as in France, two sections in the legal profession, the *avoués* and the *avocats*; *avoué*—the old word was the *procureur*—meant the attorney, and the *avocat* the advocate or barrister. Before the French Revolution the client went to an attorney, who prepared the case, drafted and signed the statement of claim and the points of defence, and instructed the advocate or barrister, who pleaded the case. The French system was therefore nearly the same as that which prevails in England. Under the present system, in civil cases were to be found still at the Bar, side by side, the attorney and the advocate. The parties before the Civil Court must be represented by an attorney, who was really the representative, the delegate, of the party. The original writ, the statement of claim, the point of defence, must be signed by the attorney. These different documents were served, not to the opponent party in person, but to the attorney. The fees were taxed, and the party who lost the case had to pay the fees of both attorneys. The attorney had also the right of pleading what were called "incidents" in the proceedings, preliminary questions as to the competence of the court, the settlement of certain details of the proceedings, &c. Even in the small provincial courts the attorney might plead any case just as well as the advocate. Whilst the presence of an attorney was legally necessary, the presence of an advocate was not required. Nobody was compelled to take an advocate. Every man could defend his own case, provided he was assisted by an attorney. Such was the law, and it would seem that it gave to the attorney a prominent position. What was the practice? The client never consulted an attorney—at least, this was quite exceptional. The client consulted an advocate, who prepared the case, the statement of claim, and the points of defence, and who sent the drafts to the attorney. The attorney simply signed them, and he appeared at the Bar simply for the purpose of reading these documents. Of course, it was quite exceptional that the parties appeared in person and conducted their own cases; an advocate appeared in nearly all cases and pleaded at the Bar. The *rôle* of the attorney in practice was quite a subordinate and rather a formal one. Before the commercial courts there were no attorneys, and the parties very seldom appeared in person. They were represented by an advocate, who needed no formal power of attorney. By the fact of his presence at the Bar he was presumed to have received formal power to represent his client. The attorneys had, therefore, no influence at all. Their complete suppression had even been advocated; and it was suggested that the rules adopted for the legal representation of the parties before the commercial courts might just as well be adopted for their representation before the civil courts. The reason why the profession had been united in the person of the advocate, and why the attorney had lost his former authority, was that no legal degree was required for the profession of attorney. It was enough to have practised three years in an attorney's office or as clerk of a civil court. The advocate must spend five years at the University. He passed each year an examination, and after five successful examinations became LL.D. The unification of the profession in Belgium was, therefore, the reverse of the process suggested in England. The barristers had put themselves in direct communication with the clients; they had begun to do the work of the solicitors. Instead of limiting their work to the pleadings, they received the clients, prepared the cases, and conducted them as from the first letter to the last act of the proceedings. The advocates would give legal advice, prepare a memorandum of articles of association of a company, act as arbitrators, be appointed as liquidators of a company, or as trustees to a bankruptcy. They could even accept the position of manager to a company, although it was recommended to be very careful in accepting such a duty. Of course, it was necessary in such conditions that strict discipline should be observed in order to maintain the dignity of the profession, and the fundamental law which ruled was a decree of Napoleon, which was still in force. Under this there was in each court an official list of the advocates practising in that court. Every year they chose among them a certain number who composed the Council of the Bar, and they also elected a chairman, who was the head of the Bar. They had to "maintain the principles of delicacy and honour which are the duty of their profession, prosecute and punish any professional incorrection by censuring, suspending, or even striking out of the list of advocates. Appeal against the decision may be brought before the Court of Appeal." Another section said:—"The advocates shall enjoy complete liberty in their mission of defending the truth and justice. They should refrain from any affirmation which is a mere supposition of facts, from all surprise, and even from any useless and superfluous speech." It would be asked what was the advantage or the inconvenience resulting from the fact that the advocates were, for all practical purposes, altogether solicitors and barristers, that in fact the fusion of the profession was an accomplished fact in Belgium. It was rather difficult to give an emphatic and a simple reply, because the problem had different sides, and the reply might be different when the question was considered from different points of view. There was no doubt that the multiple duties, the various functions, of the advocate made his work very difficult and tiring. It must not be forgotten that the association of several barristers was strictly prohibited. There could not be a firm of barristers of six or seven partners, each of them having his speciality. This was not allowed in Belgium. They might, of course, obtain the assistance of junior barristers, but the client wanted to see the advocate himself, and was not satisfied if his case was conducted by a junior counsel. The position then was that the barrister had to see the clients, to remain in direct contact with them, to be at his office, to receive the clients, to dictate the correspondence, to prepare the case, to draft the statement of claim and the points of defence, to attend to all the acts of the proceedings, and besides that he had to go into court and to plead the case. He (M. Smeesters) had often envied the British barrister, who sat in his chambers studying cases at leisure which had been carefully prepared by hard-working solicitors, and who then appeared in court simply to plead the cases. He knew that, as a rule, the solicitor attended the case in court, and that in respect of the waste of time thus incurred he was no better off than the advocate in Belgium. But he was exonerated from the exhausting effort of pleading. The Belgian barrister, having pleaded for a couple of hours, would come back to his office to find half a dozen clients waiting for him, and he would feel pretty well tired at the end of the day. Before changing the present system, he should be inclined to say to the solicitor, "Mind what you are doing, and think it over." Let him take another side of the case. For the successful conduct of a case there was no doubt a considerable advantage if one had the opportunity of being in contact with the client from the very beginning of the litigation. In a commerce case, for instance, suppose that some discussion arose between two companies as to the execution of an agreement, the manager of the company would, from the first difficulty, consult his advocate. There was simply for the present a commercial difficulty, simply a fact. This difficulty would later on lead to a

judiciary conflict, and the legal advice given to the client by the advocate, and the letters which would be written on that advice, might give to the facts a quite different turn, and might completely alter the position of the parties when they would come into court. It seemed only reasonable that the lawyer who had conducted these preliminary operations of the legal strategy should have also the responsibility of bringing these operations to a successful conclusion. Unity of command was as necessary in the judicial battle as it had proved to be on the military battlefield. The first reason was that there were always different ways of presenting the legal aspect of a case. There were several, and sometimes very divergent, reasons to justify an action, with different modes of repelling a claim and of presenting the defence. There were certainly different modes of transforming the commercial contest into a legal case. He had very seldom experienced that two lawyers had exactly the same view on the conduct of a case. This was rather a question of personal preference, of private disposition, of personal psychology. If this was so, there was certainly a great advantage if, from beginning to end, the case was conducted by the same brain. It was no use saying the errors of the one lawyer could be amended by the other. That would be true if they were together in the case from the beginning, but it would not be so if they came in succession, because, when the case came before the court, it stood as it was and the past correspondence could not be wiped out. Another reason was that, in his opinion, the barrister who had to conduct the case before the court was in a better position fully to defend his case if he had been through it from the beginning. When he had been in contact with the client, knew his mentality, his state of mind, his manner of feeling, when he had fully discussed with him all the particulars of the case, followed the correspondence, not only read the papers, but sometimes helped to draft them, or had carefully considered them in order to find a support to the case, he possessed fully the case—not only its legal aspects, but its moral aspects also. The advocate would then feel convinced of the justice of the cause, and would present it to the court with sincerity and with an enthusiastic conviction which might succeed in bringing also conviction to the mind of the judge. There would be a fighting spirit which could not come from the rather cold, theoretical, lifeless study of a case completely prepared for him. In any case, long notes were necessary to give to the barrister a complete idea of the case, and, apart from the waste of time the drafting of these notes represented, it was very difficult, if not impossible, to bring into notes and reports, however long and carefully prepared, all the details and the complete history of a case. With regard to the subject of a Ministry of Justice, such a Ministry existed in Brussels. There were in Belgium three powers, completely independent of one another—the legislative, the executive, and the judiciary. The legislative power belonged collectively to the King and Parliament; the executive power belonged to the King; the judiciary power belonged to the courts. The King had alone the executive power; he had in partnership with the Parliament the legislative power, but he had no judiciary power. The courts enjoyed, therefore, a complete liberty. They were really one of the three branches of the sovereignty. The Minister of Justice was a member of the Government. The ministers being simply the responsible agents acting for the King, it followed that the Minister of Justice, as such, was an agent of the executive power. He had himself no judiciary power, and had no directions to give to the courts who, in the fulfilment of their judiciary mission, enjoyed a complete freedom. The Minister of Justice was not a judge, he had no judiciary power, he was not a member of the judiciary power. He was a member of the Cabinet, and a detail would show what was the importance attached by the Belgian nation to the dispensation of justice. The Minister of Justice was *ex officio* deputy chairman of the Council of Ministers. His first duty was to organise, to put in action, the machinery of the judiciary power. In his sphere the judiciary power would be completely independent, but a start must be given, and the Minister of Justice should give the start. He must see that the judiciary functions were properly fulfilled and were provided with the machinery fitted for their needs. He had therefore, first of all, to appoint the judges. He appointed without any control the justices of the peace and the judges of the Civil Court. The justices of the Court of Appeal were appointed by him, but he could not choose them freely. He had simply to choose two of the candidates proposed by the Court of Appeal and two of those proposed by the county councils. In the same way, the members of the Supreme Court were chosen by him among four candidates, two proposed by the Supreme Court and two proposed by the Senate, or House of Lords. As for the judges of the Commercial Court, they were elected. They were business men elected by all the merchants of the city; they had, of course, no legal training, but they had for the legal questions the assistance of an assessor or councillor, who was a Doctor of Law, nominated by the Minister of Justice. The Minister of Justice had also to see that justice was properly rendered, that criminals should be prosecuted, that the interests of the State should be safeguarded, that the rights of the weak, for instance, orphan children, were not violated, and so on. For that purpose he fulfilled all the duties of the public prosecutor in England. He fulfilled them through his attorneys. There was at the Court of Appeal an Attorney-General, and at every Civil Court a King's Attorney, each of them with several deputies. The Attorney-General, the King's Attorneys and their substitutes, were real magistrates. They had their seats near the court. They were not members of the court, they did not take part in its deliberations, but they had their seats beside the court. In criminal cases the King's Attorneys were entrusted with the discovery and the prosecution of all crimes and offences falling under the penal jurisdiction of the court. All information concerning such crimes should be forwarded to them. They had to prepare the case, to collect all the necessary evidence, to bring the case before the Criminal Court, to conduct the case for the prosecution, to take all measures for the arrest of the criminal and the execution of the judgment. In civil cases they might be heard and give their opinion whenever they liked. But they must be heard and give their advice in all the cases where the public interest was involved, in all cases where the Crown, the Belgian State, or any other public body was involved, also in all cases where infants were concerned. In this sense the Minister of Justice, through his attorneys, had really the charge and the duty to see that the courts should not cause any prejudice to the common interest. The attorneys simply had to comply with the directions of the Minister of Justice. He might direct them to prosecute an individual or to give written advice in a civil case. At least, this was the theory, but in practice the Minister refrained from giving directions to the King's attorneys and relied upon their devotion to duty and upon their conscience. Still, they were legally not more than the Crown's attorneys, and the direct consequence of this mandatory function was that they could at any time be dismissed, while a judge could not be deprived of his function except by the judgment of the court and for definite reasons. He could not refrain from expressing regret that the King's attorney should have a seat near the court. There should be in court a complete equality between the prosecution and the defence. There was no doubt that the rank of magistrate, which was conferred on the King's attorney, who was nothing else but the counsel for the prosecution, must impress the laymen of the jury and put the defence in an inferior position as compared with the prosecution. The third duty of the Minister was to prepare all the necessary legislative reforms. This was done by a special department of his Ministry. Of course every member of the Parliament might take the initiative of a Bill and come to the Parliament with a proposition of law. In the same way, every Ministerial could come forward with a new Bill concerning his own department. But the Ministry of Justice was always consulted by the other departments, and had to examine the draft Bill on the legal point of view. For the purely legal reforms, the reforms of the Civil, Commercial, or Criminal law, these reforms were proposed and defended by the Ministry of Justice. The Bill was proposed by his department, which had at its disposal a complete documentation on foreign legislation, and in this way the officials of the department had a special training and became remarkable specialists. It was one of the noblest functions of the Minister to watch human progress, to discover the latent defects of the legal machinery, its inability to adapt itself to the new conditions, and to suggest the necessary readjustments. In Belgium they owed it to the Ministry of Justice that the Companies Act had been lately modified in order to give to the public a very efficient protection against unscrupulous promoters and speculators; that a maritime law, which was perhaps the most modern of all the Continental laws, and which had translated into positive legislation the requests and the resolutions of the international maritime associations, had been passed; and they had a law organising special tribunals for children and providing for the amendment and education of the criminal childhood; a law by which a criminal who was prosecuted for the first time and convicted could avoid the penalty if he amended and did not commit any other mischief during a fixed period; and other laws of great value. The fifth duty of the Minister was the administration of prisons. Further, he had the dispensation of the prerogative of mercy. Besides these judiciary functions, there was a statistical department, dealing with the working of the civil and commercial courts, &c. What was called in England "the Poor Law system" was also in the hands of the Minister. In many cases the penalty applied by the court was internment in a charitable institution, and in the same way children might be sent to reformatory schools. These institutions had clearly a judiciary function, and it was nearly impossible to separate their legal from their charitable character. The lunatic asylums were also under his supervision, and some church matters, such as authority to accept a legacy. The organization was very complete and most efficient. This machinery had only one slight defect. The Minister of Justice, being a member of the Government, was a political man; he was a party man, and the danger, therefore, was that when he had to appoint a judge he might be influenced by political reasons. The Belgian law had already endeavoured to moderate the danger of the political interference in the appointment of a judge. The president of the Civil Courts, the members of the Courts of Appeal, must be chosen among candidates proposed by the court and by the county councils. This rule would be perfect if it applied to all the judges. On the other side, he thought it was a mistake to ask a political body to make such presentations. In his opinion, a perfect and ideal system would be to decide that the Minister should have the choice between six candidates, three presented by the Bar and three by the court. In this way the political influence would be *nil* and the system would give to the judiciary bodies a greater independence and a greater authority. Mr. Garrett, in his address in January of last year, had expressed the wish that there should be a department of the Ministry of Justice connected with foreign law, to give information and assistance as to the enforcement of British judgments in foreign countries, and also possible as to the enforcement of foreign judgments in England. This was a brilliant idea, and he was sorry to say that there was no such department at the Belgian Ministry of Justice. The Franco-Belgian agreement of 1900 existed, but each country had the Code Napoléon; but it would be possible, he thought, to have some such treaty with this country. He expressed the hope

that the League of Nations, when fully organized, would see their way to solve any difficulties there might be in bringing about so desirable a reform.

Mr. SAMUEL GARRETT moved a vote of thinks to M. Smeesters. He said he was very interested to find that the duties which, as M. Smeesters had told them, were assigned to the Minister of Justice in Belgium were almost the duties which he had suggested in the paper he had read in that hall should be administered by the Minister here; duties which, to some extent, were not performed at all in this country, but, so far as they were, were spread over five or six departments of State, to the great detriment of the public interest in loss of time, money, and in overlapping functions. He had made some inquiries before delivering his address at the general meeting of the Society in January, 1918, as to the system in France, but, unfortunately, had not inquired as to that in Belgium; but it was very interesting to find that the practical application of the principles for which he had contended for a Minister of Justice in this country followed exactly the lines which had been adopted in Belgium. With regard to fusion, he was not quite sure that M. Smeester's remarks would encourage the advocates of fusion here. Personally, he was not in favour of fusion—at any rate, if the solicitors could get their way without it. He thought a state of things might arise where, owing to what he might call, he hoped without offence, obstruction on the part of another branch of the profession, solicitors might feel themselves compelled to say, "This state of things is intolerable, and unless we can get our way by some other means, we must go in for fusion." Personally, he was keeping an open mind about that. Solicitors did feel, with all deference to advocates here, that things were coming to nearly an intolerable position, in that there was an attitude of obstruction, of *non possumus* on the part of the Bar to every proposal of reform, and this attitude, he thought, could not continue. It was contrary to the spirit of the times in which we were living, and he was quite sure that if there were present any young men who had come back from the war, they had come back with new ideas, with a different outlook in life, and he felt that they would not put up with it. They would be quite right if they did not put up with it. He thought that the proper attitude of the solicitor branch of the profession with regard to fusion was that, while they did not want fusion if they could get the proper reforms without it, if they could not, they must go in for fusion.

The VICE-PRESIDENT seconded the motion, which was carried with loud applause. M. SMEESTERS briefly responded.

Barristers and the War.

The Special Committee appointed by the Bar Council to further the interests of returning barristers and students hope that barristers who are in a position to do so will take as pupils, without fee, men who have served in the war.

The Secretary of the Bar Council will be glad to receive the names of barristers who are willing to give such facilities.

Address: 5, Stone-buildings, Lincoln's Inn, W.C. 2.
5th February, 1919.

Union Society of London.

SESSION, 1918-19.—The 14th meeting of the Society was held in the Middle Temple Common Room, on Wednesday, 19th February, 1919, at 8 p.m. The subject for debate was: "That this house does not approve the suggested fusion of the Bar and the Solicitor Branch of the legal Profession." Opener, Mr. A. F. Kingham; opposer, Mr. Walter Stewart. The motion was carried.

Appointment of King's Counsel.

We have received a copy of the following correspondence for publication:—

House of Lords, S.W. 1.
7th February, 1919.

Dear Mr. Attorney,—The late Lord Chancellor, in a letter addressed to myself as Attorney-General, was good enough to inform me of his intentions in relation to the advice which he proposed to give to His Majesty as to the creation of silks.

You may remember that he took the view that a creation might be recommended for the early part of April without endangering the interests of those members of the Bar now or lately serving in His Majesty's forces, who naturally look to the dispersal of junior practice following upon the creation of a large number of silks as a means of advancement in their profession.

I say "a large number" because the last general creation was as long ago as October, 1914, and it is evident that I am face to face with an exceptional number of strong claims which have been postponed in obedience to an earnest desire to safeguard the interests of those members of the profession who have been serving in the forces.

I am myself, as Lord Finlay was, deeply concerned not to recommend such a creation until this object is fully attained. I am advised that the progress of demobilization justifies the view that this essential condition will be satisfied in the first week of April.

Perhaps you will be good enough, as head of the Bar, to inform me whether you have any information or view upon the matter which you desire to place at my disposal.—I am, Mr. Attorney, yours sincerely,

BIRKENHEAD.

The Right Hon. the Attorney-General, K.C., M.P.

Attorney-General's Office,
15th February, 1919.

Dear Lord Chancellor,—I beg to thank you for your letter, from which it appears that in your view, as also in the view of the late Lord Chancellor, the appointment of a considerable number of members of the Bar to the rank of His Majesty's Counsel should, at an early date, be recommended to His Majesty.

The number, I gather, is likely to be considerable because of the long interval which has elapsed since the last of such general appointments; and that interval, it is believed, may now be ended without risk to the interests of members of the Bar who are now, or until recently were, serving in His Majesty's forces.

My view, for which you are so good as to ask, is that this course may well be taken, and the information at my disposal as to the interests and the requirements of the Bar leads me to concur in the belief that a convenient time for such appointments would be early in April.—Yours sincerely,

GORDON HEWART.

The Right Honourable the Lord High Chancellor.

Fusion in the Legal Profession.

The following letter on the subject appeared in the *Times* of the 17th inst.:—

Sir,—You have been good enough to throw open your columns lately on the question of the amalgamation of the two branches of the legal profession. May I add a word as to my experience in Australia? In every State solicitors have the right of audience in all jurisdictions, but "amalgamation" only operates in one or two States. (1) To a man of established standing amalgamation has no terrors. It means a partnership, and one of the firm confines himself to the work of advocacy in the Courts, the other carries out all the functions of a solicitor; that is to say, the specialization which characterizes the two branches when separated is retained in practice under a system of

amalgamation. (2) To the junior an opportunity is afforded of obtaining work, and consequent experience, on his own merits directly from the client without being dependent upon the intervention of a solicitor to offer him a brief. In a young country juniors cannot afford to wait many years for a start, and amalgamation is a godsend to them. (3) The public gains by a saving in costs (especially in those cases where a small amount of money is in issue or where funds are limited), by securing the services of one practitioner instead of being forced to fee a barrister briefed by a solicitor. In my experience the barrister does not suffer in pocket by amalgamation of the two branches, although he may regret the disappearance of the old exclusive traditions.

C. G. WADE, K.C., Agent-General for New South Wales.
Sydney House, Cockspur-street, Trafalgar-square, S.W. 1, Feb. 14.

Solicitors' Practising Certificates.

REMISSION OF STAMP DUTY.

The following correspondence, says the Law Society's *Gazette* for February, as to repayment of Stamp Duty on Practising Certificates in certain cases has passed between the Society's Secretary and the Controller of Stamps :—

Law Society's Hall,
22nd January, 1919.

Dear Mr. Birtles,

The Council of the Law Society are aware that it has been the practice of the Commissioners at the conclusion of any year for which a solicitor's practising duty has been paid to return that duty if the solicitor shews that he has not been able, owing to war service, to reach his office during the year.

The Council, however, are not quite sure whether this return of duty is made in cases where the solicitor applying for it is a partner in a firm, and has received (though of course he cannot possibly have taken any part in earning) his share of profits in the firm. It is my impression that the duty is returned in these last-mentioned cases also, and that all you ask for is information that the man has been away from his office fighting.

I shall be greatly obliged if you will kindly confirm this impression.

Yours faithfully,
E. R. COOK, Secretary.

H. Birtles, Esq.,
Controller of Stamps, Somerset House.

Somerset House,
25th January, 1919.

Dear Mr. Cook,

In reply to your letter of the 22nd inst., the concession as regards the repayment of Stamp Duty on Solicitor's Practising Certificates applies in cases where solicitors have been or are engaged on active service with the naval or military forces, and who have taken no active part in conducting the business of their firm whilst so engaged. The receipt of a share of his firm's profits by a solicitor whose case falls within the above conditions would not have the effect of excluding him from the concession.

Yours faithfully,
H. BIRTLES.

E. R. Cook, Esq., Law Society's Hall.

Call of Solicitors to the Bar.

Under the Consolidated Regulations of the Inns of Court a student, who previous to his admission at an Inn of Court had been a solicitor in practice for not less than five consecutive years and who had ceased to be a solicitor before his admission as a student, might be called to the Bar upon passing the public examination required without keeping any terms. It appeared, says the Law Society's *Gazette* for February, to the Council that solicitors whose practising certificates had been allowed to lapse merely by reason of war service required special consideration under this rule, and they therefore approached the Inns of Court and are glad to state that the following Regulation has been issued :—

Treasurer's Office, Inner Temple,
22nd January, 1919.

Resolved—that the following proviso is inserted at the end of the first paragraph of Consolidated Regulations No. 45 :—

"Provided that, where a solicitor has been entirely prevented from practising in consequence of his having been employed in His Majesty's service for the purposes of the present war, the period of such service shall, if the benchers of the Inn to which he applies for admission shall so order, be treated as if the solicitor had been in practice during such period for the purpose of qualifying for call to the Bar under this regulation."

Mr. Joseph David Langton, of The Albany, Piccadilly, and of Paper Buildings, Temple, E.C., solicitor, Under Sheriff of the City of London, and manager of His Majesty's Theatre under the will of the late Sir Herbert Tree, has left estate of gross value £21,127.

Law Students' Journal.

Law Students' Societies.

LAW STUDENTS' DEBATING SOCIETY.—At a meeting of the society, held on 11th February (Mr. C. P. Blackwell in the chair), the subject for debate was : "That this House is in favour of the Establishment of a Ministry of Justice." Mr. W. G. Weller opened in the affirmative; Mr. G. B. Willis opened in the negative. The following members also spoke :—Messrs. C. H. Morden, A. R. N. Powys, H. G. Meyer, C. F. King, G. Gordon and N. Heath. The motion was lost by four votes.

Legal News.

Appointments.

Mr. William John Bruty, the senior member of the firm of Messrs. Duffield, Bruty & Co., of Broad Street-avenue, Blomfield-street, London, E.C.2, has resigned his appointment as Registrar of the County Court, Waltham Abbey, Essex, at the end of last year after occupying that post for upwards of fifty years. Mr. F. J. D. SIDDALL, a member of the same firm, has been appointed registrar in his stead. Mr. Siddall was admitted in 1884.

General.

Mr. Richard Septimus Richards, of Glascoed, Llangollen, Denbigh, solicitor and banker, of the firms of Richards & Sons, solicitors, and of Richards & Co., bankers, has left estate of gross value £40,070.

The committee of the Manchester and Salford Medical Charities (Hospital Sunday Fund) have forwarded to the Prime Minister, the Chancellor of the Exchequer, Mr. Balfour, and Mr. Bonar Law a protest against the regulations by which donations and subscriptions to hospitals and similar institutions are subject to income-tax. The committee express the opinion that subscriptions or donations of firms and individuals, given for the purpose of supporting hospitals and similar charities, ought to be free from taxation, especially as the splendid medical service maintained is toward the physical redemption of men, women, and children for the benefit of the nation.

At Lambeth Police-court on Wednesday Dr. Francis Stevens, medical officer of health for Camberwell, pressed for a closing order in respect of certain cottages which, owing to dampness, were, in his opinion, unfit for habitation. Mr. Chester Jones remarked that in ordinary times he would have had no hesitation in making a closing order, but as things stood the effect of such an order might be that the people would be turned into the street, without having any place to go to. The hearing of the case was adjourned, to see whether the owner could do anything to improve the property.

In the House of Commons on Monday Mr. Rowlands, Sir A. Yeo, and Lieutenant-Colonel Dalrymple White asked whether the attention of the Government had been called to the numerous notices which had been served on tenants to give up possession of the houses they occupied unless they were prepared to buy the houses on the terms fixed by the landlords; and whether the Government proposed to take any action in view of the impossibility of the tenants being able to find other houses. Mr. Bonar Law : This question is receiving immediate consideration by the Home Affairs Committee, and I hope to make a statement very shortly. Mr. Rowlands asked whether the right hon. gentleman was aware that a great number of these people had received notice to quit, and that it was impossible for them at the present time to obtain houses to go into. Mr. Bonar Law : The Government are fully alive to the importance of this subject, and will do everything they can to meet it sympathetically.

In the House of Commons on Monday Colonel Sir A. Griffith Boscawen, Parliamentary Secretary, Board of Agriculture, asked by Captain Denison-Pender whether he was aware that alarm existed among allotment-holders as to their length of tenure of the land, said :—The Board recognize the anxiety of allotment holders on this subject, and they have recently issued a memorandum to horticultural sub-committees with reference thereto. Lieutenant-Colonel Sir F. Hall : Was it not agreed that these allotment-holders should retain possession for two years after the signing of peace? Are they to be in that position? Sir A. Griffith Boscawen : That is the position. As regards land acquired by the Board under the Defence of the Realm Act and the Corn Production Act, the Board intend to retain the possession of the land acquired for allotments for a period of two years after the end of the war, unless they are satisfied that the land is urgently required for building sites or other special purposes, or in cases in which they consider the compensation payable would be in excess of the value to the nation.